H.R. REP. 103-111, H.R. Rep. No. 111, 103RD Cong., 1ST Sess. 1993, 1993 WL 181528, 1993 U.S.C.C.A.N. 378 (Leg.Hist.)

****378**P.L. 103-66, ***1** OMNIBUS BUDGET RECONCILIATION ACT OF 1993

PROVIDING FOR RECONCILIATION PURSUANT TO SECTION 7 OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1994

DATES OF CONSIDERATION AND PASSAGE

House: May 27, August 5, 1993
Senate: June 23, 24, 25, August 6, 1993
Cong. Record Vol. 139 (1993)
House Report (Budget Committee) No. 103-111,
May 25, 1993 (To accompany H.R. 2264)
House Conference Report No. 103-213,
Aug. 3, 1993 (To accompany H.R. 2264)

HOUSE REPORT NO. 103–111

May 25, 1993
[To accompany H.R. 2264]

****379** The Committee on the Budget, to whom reconciliation recommendations were submitted pursuant to section 7 of House Concurrent Resolution 64, the concurrent resolution on the budget for fiscal 1994, having considered the same, report the bill without recommendation.

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BUDGET COMMITTEE OVERVIEW OF RECONCILIATION

Thirteen committees were directed to make policy changes achieving approximately $340 billion in deficit reduction. The committees have all taken their responsibilities very seriously and this bill reflects the fact that each committee has met or exceeded its target.

When the House passes this reconciliation bill, it will have taken a first, giant step toward restoring economic health and

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fiscal sanity.

****380** This bill embodies all the basic elements of President Clinton's program to turn our country away from being an excess-consumption ***2** economy and toward investment in the future productivity of our people.

This package, when combined with the enforcement provisions that will be added in the Rules Committee, reduces the deficit by approximately $500 billion over the next five years. When discretionary spending and interest savings are included, spending reductions account for approximately $250 billion and revenue increases account for the remainder. The spending changes include an additional $50 billion in spending cuts beyond those originally proposed by the President.

When this bill is enacted and implemented, the deficit–as a percent of Gross Domestic Product–will be cut dramatically by 1998, as shown in Figure 1. Instead of soaring to more than $360 billion in 1998 as it would under current spending and tax policies, it will fall to approximately $200 billion. This is the necessary first step in long-run deficit control. Once these measures are taken, we can work on health care reform and growth-enhancing policies to make further progress on the deficit.

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At the end of fiscal year 1998, the federal debt will be lower than it would have been under current policies by nearly half a trillion dollars.

Every policy change in this bill is specific and enforceable. This bill changes entitlement law, changes tax law, and when enacted will establish new caps on discretionary spending to ensure that appropriations do not exceed the levels established in the budget resolution.

****381*3** This bill is an essential step toward the repair of an ailing economy. In the 1980's and early 1990's, America was subjected to growing deficits and debt and to patterns of Federal spending and taxation that paid inadequate attention to investment.

As a result, we now have:

Inadequate private investment in productive plant and equipment;

Inadequate public investment in infrastructure and in people;

A trade deficit that just shot up to $10 billion in March, the highest in four years;

Stagnation in the real wages of the typical American family–real average weekly earnings in April were 0.5 percent below the level of a year ago;

Increased inequality of income and wealth, as the economic gains of the 1980's disproportionately benefited the wealthy.

All these problems are the symptoms of an economy that has been subsisting for 12 years on the false stimulus of chronic deficits. Congress and the President have begun, with this bill, the difficult task of restoring health to the economy so that it can once again grow and deliver a decent standard of living to all Americans. In this introduction, we outline some of the important ways in which this bill will improve the lives of all Americans.

It reduces the huge drain on the nation's savings pool that the deficit represents. Every dollar of deficit reduction remans either a dollar more for private investment in housing, plant, and equipment, or a dollar less in jobs sent overseas. Increases in private investment are required to raise standards of living and give American workers more tools to improve their productivity and earnings.

This bill includes $75 billion in tax incentives for investment, jobs, and encouragement of work effort, aimed at small business and at communities and individuals currently suffering from low incomes.

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This bill specifically mandates–and finances–increases in childhood immunization and family preservation and support. For immunization, the bill includes $2.1 billion over five years to provide free vaccines to children who have no health insurance coverage or are eligible for Medicaid. The legislation also authorizes a tracking system so that children are fully immunized at the appropriate age for certain childhood diseases.

Within this bill's overall caps on discretionary spending, there is room to fund other presidential programs for investment in people and the physical infrastructure of our country.

More than half of the deficit reduction is made on the spending side. This bill mandates $87 billion in net entitlement cuts. The caps on discretionary spending will reduce outlays by more than $102 billion compared with a continuation of current policies. Debt service savings and changes in debt management will account for another $61 billion.

But the budget can't be brought under control by spending cuts alone–not without making deep cuts in benefits that citizens have fairly earned, inflicting hardship on people already suffering, and starving investment programs. A budget balanced by spending cuts alone will not share burdens fairly throughout society. This legislation ***4**382** improves the progressivity of the tax structure and requires those who benefitted from the policies of the 1980's and early 1990's to pay their share of the bill that has come due.

The revenue component of this bill is a net increase of $250 billion, including all effects of the expansion in the Earned Income Tax Credit (EITC).

The tax package restores tax code progressivity lost in recent years.

Most of the tax increases affect only higher-income individuals and corporations. The exception is the BTU energy tax which raises $72 billion over five years. The impact of this on lower-income persons is offset by increases in the EITC, Low-Income Home Energy Assistance and Food Stamp benefits. Overall, the Congressional Budget Office estimates that 75 percent of the net tax increase (accounting for higher EITC's and expanded Food Stamp payments) will fall on households with incomes over $100,000. CBO also estimates that 73 percent of the net tax increase will be on the upper-income 5 percent of the population. Figure 2 demonstrates the distribution of the tax changes.

DISTRIBUTION OF HIGHER TAXES UNDER RECONCILIATION BILL

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Table 1 shows the distribution of total tax burdens by income group.

****383*5** The energy tax is designed to encourage energy conservation, reduce pollution, and decrease our dependence on imported oil while also reducing the deficit by $72 billion. It is balanced among regions and industries to avoid any excessive burden on particular groups. The tax also applies to imported fuels and to the energy content of energy-intensive imports. If a family with a $40,000 income took no conservation actions by the time the tax was fully phased in, its home utility bills would go up between $14 and $17 a month. Table 2 shows the tax burden of the BTU tax by income group.

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The bill helps low-income people, particularly workers and their children, and does not burden those who rely on Social Security as their main source of income.

Social Security benefit payments are not touched. Changes in the taxation of Social Security benefits affect only high-income recipient, and bring them closer to the tax treatment of working people with similar incomes. Everyone who now pays no tax on his or her Social Security benefits will continue to be exempt. Table 3 shows a comparison of the tax burden on Social Security recipients and working people of similar incomes.

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****384*6** The expanded EITC allows a full-time minimum wage worker with two children to bring his or her family at least up to the poverty line. It encourages work effort. The proposal will reduce the U.S. child poverty rate, which was one of every four children under age six in 1991. In 1991, 5.5 million poor persons lived in families with children in which someone

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was employed full-time, year-round.

This bill increases funding for Food Stamps by $7 billion over the next five years, targeted to the estimated 5.5 million hungry children and an additional 6 million children at risk of hunger in America. The elimination of the shelter cost cap will assist the most needy families with children, who are most at risk of homelessness. Other key changes concerning Food Stamps provide increased child support payments to keep families together, a basic benefit increase, and improved anti-fraud and program management measures.

This bill improves on the President's proposal by not cutting benefits for the survivors and children of federal retirees. It recognizes that under the current benefit structure, survivors' income is already substantially reduced, to 55 percent of the retirees' annuity.

The Omnibus Budget Reconciliation Act of 1993 represents a major step forward in dealing with the severe budget deficits which became chronic in the last decade. It begins a serious program of economic reconstruction. And it represents the first real attempt in more than a decade to invest in America's future and that of our children and grandchildren.

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****389*11** STATEMENT OF THE COMMITTEE ON THE BUDGET

The Committee on the Budget to whom reconciliation recommendations were submitted pursuant to section 7 of H. Con. Res. 64, the Concurrent Resolution on the Budget for Fiscal Year 1994, having considered the same, reports a bill embodying those recommendations.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. The Omnibus Budget Reconciliation Act of 1993 was ordered reported by the Committee on May 20, 1993, by a roll call vote of 26 to 17, without recommendation, with a quorum being present.

BUDGET AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee states that information furnished by the Congressional Budget Office on the Omnibus Budget Reconciliation Act of 1993, and required to be included therein, will appear in the explanation of the various titles contained in the bill.

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee believes that the Omnibus Budget Reconciliation Act of 1993 would not have an inflationary impact on prices and costs in the operation of the general economy.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to this Committee.

TITLE I–COMMITTEE ON AGRICULTURE

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U.S. House of Representatives,
Committee on Agriculture,
Washington, DC, May 14, 1993.

Hon. Martin O. Sabo,
Chairman, Committee on the Budget,
O'Neill Building, Washington, DC.

Dear Mr. Chairman: I am transmitting herewith the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 1994, provided for under House Concurrent Resolution 64, the Concurrent Resolution on the Budget–Fiscal Year 1994.

The Committee has worked diligently to achieve the deficit reduction required of it for fiscal year 1994 and has based its recommendations on preliminary budget estimates by the Congressional Budget Office. Should these estimates be substantially ****390*12** changed, the Committee would seek to revisit its recommendations so that the original deficit reduction efforts remain intact.

With best wishes, I am

Sincerely,

E (Kika) de la Garza,
Chairman.

Enclosure.

BRIEF EXPLANATION

Title I of the bill will reduce projected agriculture spending by more than $3 billion over the next 5 years, restructure the Federal loan program for rural electric and telephone cooperatives, and authorize increased Food Stamp Program benefits for low-income people.

The bill meets the budget targets for agriculture and nutrition programs that were set out in the budget resolution.

DIRECT SPENDING PROVISIONS

Increases crop acreage ineligible for deficiency payments

[CBO projected 5 year savings=$1,960 million]

Title I increases non-eligible payment acres (referred to as flex or triple base acres) from 15% to 20% for crop years 1994 through 1998 for wheat, feed grains, cotton and rice program participants. Farmers are allowed to plant a variety of crops on flex acres but do not receive government deficiency payments on that acreage. Title I also extends provisions of the wheat, feed grains, cotton, rice, and general commodities (including acreage bases and yields, payment limitations, etc.) price support programs to ensure continued deficit reduction through fiscal year 1998.

Caps acreage enrollment into CRP; ensures minimum funding for WRP

[CBO projected 5 year savings=$469 million]

Title I limits enrollment of land into the Conservation Reserve Program through 1995 to no more than 38 million acres. Requires the Department of Agriculture to enroll in the Wetlands Reserve Program not less than 330,000 acres by the end of 1995, and not less than 975,000 acres through the year 2000.

Lowers dairy program costs

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[CBO projected 5 year savings=$253 million]

Title I readjusts purchase prices for butter (from current $0.76/pound to no more than $0.65/pound) and nonfat dry milk (from current $0.97/pound to no less than $1.034/pound) beginning on the date of enactment. It also extends the minimum price support level for milk of $10.10 per hundredweight through 1998. Title I also extends the provisions of the dairy price support program to ensure continued deficit reduction through fiscal year 1998.

Increases marketing assessments on tobacco and sugar programs

[CBO projected 5 year savings=$23 million]

Title I of the bill extends marketing assessments on tobacco and sugar through the 1998 crop and increases such assessments by ****391*13** 10%. It also extends the sugar price support and marketing quota programs to ensure continued deficit reduction through fiscal year 1998.

Extends loan origination fee for oilseeds program

[Maintains CBO baseline]

Title I extends the current soybean and minor oilseeds programs, including the loan origination fee, through the 1998 marketing year.

Freeze funding for Market Promotion Program

[CBO projected 5 year savings=$234 million]

Title I of the bill freezes funding for the Market Promotion Program (MPP) at the current level of $147,734,000 annually. MPP is an export promotion program to develop, maintain and expand commercial export markets for U.S. agricultural commodities and products.

Increases Forest Service recreation fees

[CBO projected 5 year savings=$44 million]

Title I also extends the authority of the Secretary of Agriculture to charge admission, entrance and user fees on certain lands administered by the Department of Agriculture.

Increases assessment for peanut program

[CBO projected 5 year savings=$111 million]

Title I of the bill provides for an additional 2% assessment on peanuts for the 1993 through 1998 crops and extends the current assessment through 1998 to ensure that the peanut program remains a no cost program.

Provides for a temporary duty of $0.55/kilogram on imports of peanut butter and peanut paste through July 31, 1996. Effective July 31, 1996, makes peanut butter subject to the import quota established for peanuts pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended.

Reduces payments and minimum price for honey producers

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[CBO projected 5 year savings=$23 million]

Title I reduces the amount of price support payments that may be received by a honey producer from $125,000 in the 1994 crop year to $100,000 in the 1995 crop year, $75,000 in the 1996 crop year, and $50,000 in the 1997 and following crop years.

It also reduces the minimum price support level for honey from 53.8 cents per pound to 50 cents per pound, ensures deficit reduction goals are met in the out years by extending the honey price support program through the 1998 crop, and eliminates the current honey marketing assessment beginning in crop year 1994.

Reduces payments for wool and mohair producers

[CBO projected 5 year savings=$47 million]

Title I reduces the amount of incentive payments a wool or mohair producer may receive from $125,000 in the 1994 marketing year to $100,000 in the 1995 marketing year, $75,000 in the 1996 ****392*14** marketing year, and $50,000 in the 1997 and following marketing years.

Title I also reduces outlays by prohibiting the Secretary of Agriculture from deducting marketing charges in determining net sales proceeds for shorn wool and shorn mohair. This prohibition encourages improved quality and improves market access. The bill also ensures deficit reduction goals are met in the out years by extending the price support program for wool and mohair through the 1998 marketing year, and eliminates marketing assessment beginning in crop year 1994.

AUTHORIZATION SPENDING PROVISIONS

Increases REA interest rates and restructures REA programs

[CBO projected 5-year savings: $154 million]

Restructures REA electric program.–Title I eliminates the Rural Electrification Administration's (REA) current 2% loan program, and replaces it with a 3-tier lending program for rural electric cooperatives:

Hardship loans.–This tier reduces the 5% direct/insured loan program to $125 million in loan authority. The current level is $625 million. Funds will be used to make hardship loans based on the financial ability of the borrower cooperative to repay the loan. Title I also establishes eligibility criteria for such loans.

Municipal rate loans.–This tier provides for a direct/insured loan program of $600 million in loan authority with an interest rate comparable to the interest rates paid by city-owned utilities for new municipal borrowing. The interest rate charged to the borrower is capped at 7 percent for a portion of the loan authority for borrowers meeting certain criteria.

Federal Financing Bank (FFB) program.–This tier consists of the guaranteed loan program being continued in its current form.

Restructures REA telephone loan programs.–Title I also eliminates REA's 2% loan program for rural telephone cooperatives, and creates a multi-level loan program for rural telephone cooperatives. A hardship loan program is established to make a limited amount of loans at 5 percent interest.

Transfers REA into Rural Development Administration.–Title I transfers authority for the administration of the Rural Electrification Administration to the Department of Agriculture's Rural Development Administration (RDA). REA functions are to be established within a Rural Utilities Division at RDA. This division's responsibilities will consist of the current REA electric and telephone programs as well as the current RDA water and wastewater programs.

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Authorizes USDA reorganization and office consolidation

[CBO projected 5-year savings: approximately $500 million]

Provides general instructions to the Secretary of Agriculture to consolidate personnel and field, regional and Washington offices of agencies within the Department of Agriculture, and to reduce personnel and duplicative overhead expenses.

****393*15** Increases and broadens Food Stamp Program benefits

[CBO projected 5-year cost: $7,285 million]

Subtitle C of title I, the Mickey Leland Childhood Hunger Relief Act, amends the Food Stamp Act to reduce hunger through expanded benefits and changes in the Food Stamp program operations and to improve program integrity.

In addition to a number of provisions easing rules for low-income high school students, recipients of earned income tax credits, homeless families in transitional housing, beneficiaries of general assistance vendor payments, students receiving education assistance, disabled applicants, and those in substance abuse programs, the subtitle–

Raises the basic benefit level in the Food Stamp program from 103 percent to 104 percent of the cost of the Thrifty Food Plan;

Raises and then removes the limit on deductible shelter expenses now applied to households without elderly or disabled members;

Provides that households reapplying for food stamp benefits at the end of a certification period will receive full benefits in the first month of their new certification period;

Increases Puerto Rico's annual nutrition assistance block grant;

Excludes from food stamp income calculations legally obligated child support payments to support a child outside the household and the first $50 a month received by a household for child support;

Raises the limit on deductible dependent care expenses;

Increases the amount that may be spent on supporting those in employment and training programs;

Improves rules governing how vehicles are treated as assets in determining food stamp eligibility;

Simplifies the household definition;

Removes certain provisions dealing with benefit reductions;

Expands the degree to which information on retail and wholesale food concerns can be used in protecting program integrity;

Provides for additional means of collecting claims against recipients;

Calls for demonstration projects directed at street trafficking of food stamps and testing the concept of allowing recipients to accumulate resources beyond current limits;

Increases trafficking penalties;

Changes rates of Federal matching for State administrative costs associated with computerization, anti-fraud activities, the Systematic Alien Verification for Entitlements (SAVE) system; and

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Changes the formula by which sanctions are assessed against States for high rates of error identified through the food stamp quality control system, thereby reducing sanctions.

****394*16** Crop Insurance

Title I revamps the Federal crop insurance program to encourage greater participation through government-paid catastrophic loss coverage and other improvements.

PURPOSE AND NEED

INTRODUCTION

The budget reconciliation language approved by the Committee on Agriculture meets the first-year and five-year targets assigned to the Committee as a result of passage of the Concurrent Resolution on the Budget–Fiscal Year 1994 (H.Con.Res. 64). The Committee package modifies various agricultural policies to reduce baseline Federal spending by nearly $3 billion over the next five years; it restructures the loan programs of the Rural Electrification Administration to lower Federal subsidies; and it revamps the Federal Crop Insurance program.

In addition, the Committee package advances a long-overdue set of changes that expands the Food Stamp Program's ability to meet the food needs of low-income Americans. These changes were assumed in the Budget Resolution which provides an additional $7.285 billion in funding for the Food Stamp Program over the next five years.

While the specifics of deficit reduction are not an easy or politically popular task, the Committee on Agriculture has consistently met its obligations under the reconciliation process over the past 12 years. Legislative changes approved by the Committee and enacted into law have achieved more than $57 billion in savings in the operation of the programs under its jurisdiction since 1981, according to the Congressional Budget Office.

The Committee feels compelled to note that since 1985, farm program spending has decreased while every other major category of Federal entitlement spending–and the Federal deficit–has increased.

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****396*19** CBO has projected that 10 of the 11 largest entitlement programs will continue to increase–anywhere from seven-tenths of one percent to nearly 16 percent through 1997. Only farm program spending has declined since 1985–by an average of 9 percent per year. And only farm program spending is projected to continue to decline in the out-years.

Farm program spending cannot be blamed for worsening the Federal deficit. In 1993, farm program spending by the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) will represent less than one percent of Federal outlays. Farm program spending has now dropped to under 20 percent of the Department of Agriculture total outlays.

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****399*22** Today nearly 60 percent of USDA spending is devoted to domestic nutrition programs, most prominently the Food Stamp Program. Nutrition programs have become increasingly important in meeting the food needs of low-income Americans. While the U.S. food supply is among the most affordable in the world–if not the most affordable–economic dislocations and restructuring throughout the country leave millions of low-income Americans unable to adequately feed their families without assistance.

The Committee believes that both agriculture and food assistance programs are vital to our Nation. The Committee has attempted to apportion the required agricultural budget reductions in what it considers a fair and balanced manner. The Committee believes that certain proposals submitted by the President with respect to the structure of agricultural programs

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need further study and debate, and thus are not appropriate for inclusion in this reconciliation measure.

The provisions that follow reflect the desire of a majority of the Committee to respond to deficit reduction objectives and changing priorities while maintaining the functional effectiveness of our agricultural programs.

RECONCILIATION PROVISIONS

Subtitle A increases the percentage of non-eligible payment acres (Normal Flex Acres or "triple base") from 15% to 20% for crop years 1994–1998 under commodity price support programs for wheat, feed grains, cotton, and rice. The majority of the spending on commodity programs involves deficiency payments and these payments are also a common denominator among the supported crops. Therefore, an increase in flex acreage proportionately decreases the amount of deficiency payments a producer of a program crop can earn, thereby decreasing program spending. At the same time, with some minor exceptions, producers have the ability to choose the crop they plant on flex acres. The crop planted will be determined by market value and agronomic conditions. This partially offsets the reduction in deficiency payments.

The bill extends all other provisions of the wheat, feed grains, cotton, rice, and general commodities (including acreage bases and yields, payment limitations, etc.) price support programs to ensure continued deficit reduction through fiscal year 1998. The Congressional Budget Office (CBO) estimates that these changes will reduce the deficit by $185 million in fiscal year 1994 and $1,960 million during fiscal years 1994 through 1998.

Section 1105 provides for savings in the dairy program of approximately $253 million over 5 years. Savings are achieved through the adjustment of purchase prices for butter and nonfat dry milk (powder) to better balance purchases of each product. This change will increase sales of butter in the commercial market, resulting in reduced Federal purchases. The shift in butter and powder prices is consistent with the provisions of the Food, Agriculture, Conservation and Trade Act of 1990 directing the Secretary to allocate the purchases in a manner that minimizes Federal outlays.

Under the Omnibus Budget Reconciliation Act of 1990, each hundredweight of milk marketed by producers is subject to a reduction in price that partially offsets the cost of the dairy price support ****400*23** program. The reduction in price will expire at the end of calendar year 1995. To provide for continued savings in the program, section 1105 extends the reduction through 1998 at a basic rate of ten cents per hundredweight. The section also extends the provisions of the dairy price support program through 1998.

The Committee proposes a ten percent (10%) increase in the deficit reduction assessment for tobacco to be levied from fiscal year 1994 through fiscal year 1998. Currently, tobacco is charged a one percent (1%) assessment to help meet the mandates of the 1990 deficit reduction agreement. The one percent assessment is equally divided between the tobacco producer and the first purchaser of the tobacco (e.g. tobacco product manufacturer). The Committee's proposal will require a total assessment of 1.1% of the price support level for tobacco shared equally between tobacco farmers and tobacco manufacturers.

Section 1106 also makes changes to the way in which the Department of Agriculture calculates tobacco allotments. Under current law, each farm's acreage allotment is determined according to a formula which takes into account a national average yield goal. Sufficient data is collected to determine individual farm yields and quality of tobacco. The Committee's recommendation requires that each farm's yield be determined according to regulations which will result overall in a quality of tobacco acceptable to the trade. By tracking individual farm allotments annually, the Department can accurately adjust allotments to reflect over-marketings or under-marketings for the previous year. Farm-by-farm calculations will help to eliminate some limited instances of fraud and irregularities that occur in the tobacco program.

The Committee recognizes that imports of burley and flue-cured tobacco have again become a serious threat to the tobacco program. Twice during the 1980's, changes were made in the program, based on an understanding with the manufacturers and dealers, in order to reduce imports. At a cost to the farmer, the companies benefited from reduced price support levels for tobacco and gained significant influence over setting the level of domestic quota. This understanding has not been followed.

During 1992 imports of flue-cured tobacco were almost double the 1991 level, including a significant quantity of low quality tobacco imports such as scrap and stems. Similarly, the 1993 quota for burley tobacco was reduced 10% (the maximum decrease allowed by law this year) and flue-cured tobacco would have been reduced 7.5% had not a special discount sale

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occurred last November.

In the future, particularly in light of recent discussions within the Administration and the Congress about increasing the excise tax on cigarettes, the Congress and the Administration should give serious consideration to legislative options that would limit tobacco imports and provide incentives to use domestic leaf in tobacco products, or, conversely, provide disincentives for using foreign leaf in U.S.-manufactured tobacco products.

The Committee has also agreed to a ten percent (10%) increase in the deficit reduction assessment for sugar to be levied from fiscal year 1994 through fiscal year 1999. Currently, sugar is charged a one percent (1%) assessment to help meet the mandates of the 1990 deficit reduction agreement. The Committee-passed resolution ***24** will require a total assessment of 1.1% of the price support level for raw cane and beat sugar.

In the case of raw cane sugar, the total assessment for the 1994 through the 1999 marketings will be .198 cents per pound. In the case of beet sugar, the total assessment for the 1994 through 1999 marketings will be .2123 cents per pound. CBO has estimated that the assessment on tobacco and sugar will reduce the FY94 deficit by $1 million. According to the CBO, the aggregate deficit reduction (FY94–FY98) of this provision will equal $23 million.

Section 1108 extends the current oilseed loan program, including the loan origination fee, through the 1998 marketing year. The 2% origination fee, which was a part of the 1990 reconciliation legislation, is continued as a method of offsetting the cost of the program.

The Committee proposes to place an additional two percent (2%) assessment on peanuts to be levied from fiscal year 1994 through fiscal year 1998 to offset losses in the peanut program. CBO has estimated that the assessment will reduce the FY 1994 deficit by $15 million and the FY 1994 through 1998 deficit by $111 million.

Recent losses to the peanut program are attributable to the peanut quota reflecting the Department of Agriculture's overestimated demand. A second factor contributing to losses in the program is the continued quota-exempt importation of peanut paste and peanut butter. Although the importation of peanuts and peanut products is regulated under Section 22 of the Agricultural Adjustment Act, a 1953 Executive Order signed by President Eisenhower exempts peanut butter from these restrictions. Peanut paste does not have this waiver, but the restriction on peanut paste imports is not currently enforced by the U.S. Customs Service.

Similarly, since the ratification of the Canadian Free Trade Agreement (Free-Trade Agreement), imports of peanut butter have increased more than 700%. Canada has a negligible to non-existent peanut production capacity. Most peanuts used to produce peanut butter in Canada are imported from China or Argentina. Transshipped foreign peanuts violate the rule of origin limitations contained in the Free-Trade Agreement. In some instances, the U.S. Government has identified the prohibited use of U.S. additional peanuts re-imported to the United States from Canada in the form of peanut butter or peanut paste.

The loophole in the peanut restrictions of Section 22 of the Agricultural Adjustment Act should be closed. Section 1109 requires that a 55 cents per kilogram tariff be placed on all imported peanut butter and peanut paste. The increased tariff rate will expire on July 31, 1996. At that time, peanut butter and peanut paste will be placed under the existing Section 22 limitations established for peanuts and peanut products.

The bill lowers the price support rate for honey from 53.8 cents per pound to 50 cents per round from fiscal year 1994 through fiscal year 1998. Additionally, payment limitations will be set as follows: $125,000 in the crop year 1994; $100,000 in the crop year 1995; $75,000 in the crop year 1996; and $50,000 in the crop year 1997 and subsequent crop years. CBO has estimated that the assessment will reduce the FY94 deficit by $3 million and the FY94–FY98 deficit by $23 million.

****402*25** In recent years, the honey program has suffered from increased competition from Chinese honey (imports increasing 300% in five years and surpassing the volume of all other importers combined). Chinese honey is often sold on the world market at 10 cents per pound less than the average world price of 50 cents per pound.

The Committee recommends that the Administration immediately initiate an investigation into the impact that imports,

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specifically Chinese imports, have on the operation of the honey price support program and on domestic honey producers. The Committee further recommends that the Administration take appropriate action as permitted under section 22 of the Agricultural Adjustment Act of 1933 or under section 406 of the Trade Act of 1974.

The Food, Agriculture, Conservation, and Trade Act of 1990 amended the National Wool Act of 1954 to provide a limit on the total amount of payments that a person may receive for wool or mohair for any marketing year, beginning with a $200,000 limit for the 1991 marketing year and gradually reducing to $125,000 for the 1994 and subsequent marketing years.

Section 1111 further reduces the existing limitation by $25,000 per year, resulting in a $50,000 limit in the 1997 and subsequent marketing years.

In addition, the Wool Act is amended to prohibit the Secretary from deducting marketing charges for commissions, coring, or grading in determining the net sales proceeds for shorn wool and shorn mohair. This prohibition reduces outlays, encourages improved quality, and improves international market access.

Section 1111 further amends the Wool Act to allow the assessment for promotion and marketing purposes to continue at current levels, to extend the price support program for wool and mohair through the 1998 marketing year to ensure continued deficit reduction, and to remove outdated and obsolete provisions.

CBO estimates that section 1111 will reduce the deficit by approximately $47 million over 5 years.

Subtitle B makes changes that affect the loan programs of the Rural Electrification Administration (REA) that CBO estimates will reduce authorized spending by $154 million from FY 1994 through 1998. The REA was established in 1935 by an executive order of President Franklin Roosevelt to help extend electric utility service into the rural areas of the United States. In 1949, Congress expanded REA's mission by authorizing the agency to make loans to providers of telephone service to rural areas for the purpose of furnishing and improving rural telephone service.

Today, virtually all households in the United States are electrified and nearly all rural communities are connected with telephone service. However, the mission and role of the REA continues.

Rural economic development is critical as communities across the country struggle to compete with their urban counterparts for jobs. Barriers to rural development result from the lack of access to adequate financing and the vastness of space and distance often separating people in rural communities not only from one another, but also from other towns and cities across America. The REA plays a vital role in overcoming these barriers by providing electric service to farms and rural communities and ensuring the availability of modern telephone service to persons living in rural areas.

****403*26** Recently, criticism has been aimed at the REA because of what some believe is a failure by the Federal Government to shut the door on the agency with a note across it reading "mission accomplished." The mission is not accomplished because rural communities do not have the same quality of electric and telephone service as their urban neighbors, Yet, adjustments can, and should, be made to the REA program to ensure that it does meet its continued objective while minimizing its budgetary impact on the United States Treasury. The provisions contained in this package are designed to address that challenge by reducing the cost of the REA program.

First, the bill restructures the direct/insured electric and telephone loan programs administered by the REA. A tiered system is established for the purpose of placing electric and telephone borrowers in the most economical loan program offered by the REA. A hardship criteria is established for both telephone and electric loan borrowers. Upon meeting this criteria, the neediest borrowers become eligible to receive a 5% loan. The current 2% telephone loan program is eliminated by this bill. The next criteria established would move telephone borrowers into either the current Rural Telephone Bank (RTB) loan program or a new cost-of-money loan program (capped at 7%). Electric borrowers will move into a Municipal Rate loan program that is also capped at 7%. Criteria for this category is established. Finally, applicants who fail to meet the criteria established for the categories outlined above become eligible to apply for loan guarantees. Such guarantees are available through the Federal Financing Bank (FFB) program currently administered by the REA.

Second, the bill requires that a telecommunications modernization plan be established in a state before borrowers are eligible

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for all telephone loan programs. State public utility commissions are allowed 6 months to develop such a plan after final regulations for the program are promulgated, after which time the Administrator shall approve a plan developed by a majority of the telephone borrowers in the State. The bill establishes criteria for the modernization plan.

Finally, the bill directs the Secretary of Agriculture to transfer all of the programs and functions of the REA into the Rural Development Administration (RDA), thereby eliminating the REA as we know it. A Rural Utilities Division is established within the RDA to coordinate the electric, telephone, and water and waste treatment loan and grant programs administered by the Department of Agriculture.

By implementing these changes, the cost of providing these programs will be reduced significantly over the next five years, the American people will receive better use of their tax dollars, and rural America will continue to enjoy the same quality of electric and telephone service it deserves.

Substitle C, the Mickey Leland Childhood Hunger Relief Act, honors the late Congressman Mickey Leland, the first chairman of the House Select Committee on Hunger, who died in August 1989 during a trip to Africa to further his work to alleviate hunger at home and around the world. In the spirit of Congressman Leland's courage, vision, and persistence, the Committee recognizes the ****404*27** need to adjust domestic nutrition programs to address the pressing needs of the hungry in the United States.

Significant and substantive improvements to Federal food assistance programs were included in the House passed 1990 Farm Bill. However, because of the budget crisis facing the Nation and the pay-as-you-go requirements of the October 1990 budget agreement, most of the higher-cost provisions of the bill were not able to be included in the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101–624).

In the fall of 1991, the Committee reported the Mickey Leland Childhood Hunger Relief Act (H.R. 1202; H. Rept. 102–396), which drew on basic provisions approved by the House in 1990. This legislation was incorporated into a "children's initiative" which also addressed improvements in the Aid to Families with Dependent Children (AFDC) Program (H.R. 1603, the Family Preservation Act), but failed enactment.

With funding recommended in the President's Fiscal Year 1994 budget and subsequently included in the Fiscal Year 1994 budget resolution approved by the House, the Committee is able for the third time to act on the Mickey Leland bill. The original goals of the bill remain–to ensure adequate food assistance, promote self-sufficiency, simplify the provision of food assistance, and improve program integrity and management.

The Committee believes the improvements in this subtitle are vitally needed, especially while our economy is struggling to improve. Many American families are still faced with lost earnings and unemployment, and this has led to a dramatic increase in the food stamp caseload. Since the Committee reported the 1991 Mickey Leland Act, enrollment in the Food Stamp program has jumped 17 percent, from 23 million people to an all-time high of 26.9 million persons in February 1993. The food stamp caseload is now over 30 percent larger than at the beginning of the most recent recession.

Basic food stamp benefit levels.–Food stamp benefits are based on the cost of the Agriculture Department's "Thrifty Food Plan," the least costly of a number of food plans developed by the Department, adjusted each fiscal year for food price inflation. This subtitle increases basic food stamp benefit levels to 104 percent of the cost of the Thrifty Food Plan.

The Hunger Prevention Act of 1988 required that basic benefit levels be increased to 103 percent of the cost of the Thrifty Food Plan. Witnesses at hearings during consideration of the 1990 Farm Bill testified to the need for a further increase, both because benefits lag behind food price inflation and because Agriculture Department studies indicate that many families find it difficult to purchase a nutritionally adequate diet at the Thrifty Food Plan spending level. Over the history of the Thrifty Food Plan, the cost of the plan in the last half of each fiscal year has exceeded the cost in the previous June (the month on which each year's inflation adjustment is based) by an average of 5 percent; when inflation is low and running at a three percent annual rate, as is now the case, the cost of the plan by the end of a fiscal year is about 4 percent higher than in June of the previous year.

Helping low-income high school students.–Currently, when a high school student who is a member of a food stamp

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household **405*28 reaches age eighteen, any income earned by the student is counted in determining food stamp eligibility and benefits. This subtitle requires a disregard for earnings of high school students who are twenty-one years of age or younger.

The Committee is aware that there are a number of students who remain in secondary school beyond their eighteenth birthday. In some cases, this may be a matter of a few months. In others, it may be for a longer period of time. For example, in south Texas, there are many students who speak only Spanish in the home. These students must learn English in the classroom, and many of them repeat grades due to difficulty in learning English. Some of these students may be as old as twenty-one, yet still living with their parents, working part-time, and continuing their high school education. The Committee believes low-income students who remain in school have a far better chance of boosting their earnings potential and becoming self-sufficient. A student's income on reaching age eighteen can cause the family to be removed from food stamp rolls or reduce the family's benefit. If so, it is likely the student would drop out of school to work to make up for the lost benefits. In order to encourage those students who are living with their parents to pursue their education, the Committee approved an amendment that would exclude their income up through age 21. The Committee wishes to emphasize that this amendment in no way changes current law regarding those students who live away from home and have formed a separate household.

Households with higher shelter expenses.–In determining income for food stamp purposes, households are allowed to deduct excessively high shelter expenses (those above 50 percent of net monthly income after other deductions have been taken). Households with elderly or disabled members may claim this deduction with no limit. However, the deduction for other households is limited by an inflation indexed "cap," now standing at $200 a month. This subtitle increases the cap in fiscal year 1994 and then permanently removes it for later years.

Recent studies indicate that more than 45 percent of poor renters pay in excess of 70 percent of their income for shelter costs and that 56 percent spend at least half of their income on shelter. Some 68 percent of food stamp households claim a food stamp excess shelter cost deduction. But, for the 15 percent of households who are at the cap, the full value of the shelter expense deduction is not available, and the Food Stamp program assumes that they have money available for food that actually must go for rent and utilities. Increasing and then removing the shelter deduction cap corrects this inequity. Because the affected households are limited by a gross income eligibility ceiling (without regard to deductions) no new households would be made eligible. Raising and then eliminating the cap will only provide more realistic benefits to those already eligible for food stamps whose shelter costs consume a very high proportion of their income and help offset rising utility bills that result from any energy tax.

Earned income tax credits.–Earned income tax credits (EITCs) are not counted as income for food stamp purposes. In addition, they are not counted as resources (liquid assets) in the month received and the following month. This subtitle requires that earned **406*29 income tax credits be disregarded as resources for one year following their receipt by a food stamp participant. It is not intended that households that reapply within one month of their termination from the program be denied this exclusion. The Committee believes that it is unwise public policy to induce food stamp families to spend their tax credits quickly, rather than to encourage their efforts to save the payments for worthwhile purposes that can lead to self-sufficiency.

The Committee does not intend that the implementation of the provision excluding all earned income tax credits from consideration as resources for a one year period result in complicated and burdensome administrative requirements for local food stamp offices. Such offices should not be required over the course of the year to monitor the expenditure of the EITC funds nor the commingling of such funds with other resources of the household.

Families in transitional housing.–Public assistance (e.g., Aid to Families with Dependent Children (AFDC) payments made to landlords providing transitional housing for the homeless are disregarded up to an amount equal to 50 percent of the State's AFDC shelter allowance, if any. This subtitle requires a full disregard of public assistance third party payments for transitional housing.

From fiscal year 1988 through fiscal year 1990, the Food Stamp program granted added benefits to AFDC families living in "welfare hotels" by disregarding as income benefits paid in excess of a regular AFDC grant and the designated shelter allowance portion of the grant paid to a housing provider rather than the family. This treatment was established in recognition

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of their special needs, primarily the lack of adequate food preparation, storage, and shopping facilities. Without this treatment, many homeless households would have been ineligible for food stamps and others would have had their benefits reduced. The provision was time-limited in expectation that these families would be moved to more permanent and appropriate living arrangements and so as not to provide an incentive to keep them in homeless hotels indefinitely. The 1990 Farm Bill followed up on this earlier provision by providing that third-party public assistance payments made to landlords for transitional housing for the homeless be disregarded up to an amount equal to half the State's AFDC shelter allowance.

State and local efforts to move the homeless into permanent housing through the use of transitional housing arrangements that provide both improved housing and supportive services are proving to be an effective tool in removing families from welfare hotels. The Committee's provision is intended to encourage and support these efforts to place homeless AFDC families and others in independent housing through transitional housing programs and to remove an inequity in the current disregard (i.e., it only applies in States that have a separate shelter allowance in their AFDC program).

The Committee understands transitional housing means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within 24 months (or a longer period if necessary to facilitate transition to independent living). Transitional housing includes housing primarily designed to serve deinstitutionalized individuals and other homeless persons with mental disabilities, as well as homeless families ****407*30** with children. In addition, the Committee intends that regulations implementing the amendment provide that, in calculating any excess shelter expense deduction for the affected households, the Secretary will apply the long-standing policy of not granting a deduction for expenses paid out of income that is excluded as a reimbursement or vendor payment.

General assistance vendor payments.–State or local general assistance paid as a vendor payment for living expenses generally is counted as income for food stamp purposes. This subtitle require that only general assistance vendor payments made for housing expenses (exclusive of energy or utility cost assistance) be counted.

In some cases, households qualifying for State or local general assistance receive part or all of their benefits in the form of emergency vendor payments to third parties on their behalf. To the extent that the purpose of these payments can be classified as living expenses, they generally are counted as income. However, carrying out this rule is administratively complex, and a recipient's need for food stamp assistance is not materially affected by many of the vendor payments, such as a voucher for gasoline to get to a job interview or a one-time payment to a utility company to prevent a shut off of service. In the 1990 Farm Bill, general assistance vendor payments in States where State law prohibits any type of cash general assistance were required to be disregarded for food stamp purposes. In order to reduce administrative complexity and limit the degree to which general assistance vendor payments are counted in other States, the general assistance vendor payment rule is changed to require only a limited and easily identified portion of these payments be counted.

Continuing benefits to eligible households.–Households that do not complete all the procedural requirements for eligibility recertification in the last month of their certification period, but are then determined eligible shortly afterward, have their first month's benefits in the new certification period reduced (i.e., pro-rated to the date they complete the requirements and are judged eligible). This subtitle ends this practice for households fulfilling eligibility certification requirements within the month following the end of their certification period.

The Disaster Assistance Act of 1988 (P.L. 100–387) allowed migrant and seasonal farmworker households to receive a full month's benefit on recertification if they complete eligibility requirements within the month after the end of a certification period. This subtitle extends this provision to other food stamp households. A 1989 General Accounting Office report found that reducing benefits at recertification was causing hardship and encouraged Congress to consider modifying the requirement. The current provision can cause hardship when persons are unable to fulfill procedural requirements because of age, disability, limited literacy skills, or other problems such as sickness. Eliminating the provision gives eligible households a reasonable and limited "grace period" in which to reapply without losing benefits.

The Committee intends for this amendment to simplify administration as well as ensure that more adequate benefits reach households that do not have reduced need but are temporarily "ineligible" because they have not completed procedural requirements. ****408*31** In this regard, the Committee intends that the Department of Agriculture develop a simple method, preferably the method used for migrant and seasonal farmworkers, for ascertaining when recipients are entitled to a full month's benefit at recertification.

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The nutrition assistance program for Puerto Rico.–From 1974 through 1982, Puerto Ricans participated in the regular Food Stamp program. In 1982, the program was eliminated in Puerto Rico and replaced with an annual nutrition assistance block grant at a level 25 percent less than the previous Food Stamp level. From 1982 to 1986, the grant was frozen at $825 million. Each year since 1986, the grant received increases for inflation. However, the Committee believes funding for Puerto Rico's nutrition assistance grant should be increased, and this subtitle provides some added funding over and above that required to keep pace with inflation.

PROMOTING SELF SUFFICIENCY

Education assistance.–As of July 1993, Federal education assistance under title IV of the Higher Education Act will be totally disregarded as income for food stamp purposes (P.L. 102–325). Other education aid is excluded only to the extent that it is earmarked or used for tuition, fees, and other, specific education-related expenses. This subtitle requires that all education aid (including non-federal assistance) be excluded in food stamp income calculations.

This subtitle simplifies the Food Stamp program's treatment of education assistance and conforms food stamp rules with those mandated for most Federal education aid and the AFDC program. This is now one of the most complex areas of the Food Stamp program, for recipients and administrators. Eligibility workers must keep track of various sets of conflicting rules which differ based on the source of the education benefits, the purpose for which the benefits are earmarked, how the benefits are used, and what other benefits the household receives. In addition to simplifying the treatment of education benefits, the Committee also supports the amendment in light of an increasing body of research that shows that postsecondary education is one of the most reliable means by which low-income people can escape poverty.

Child support.–For food stamp purposes, child support payments made by an absent parent are counted as income available to the parent paying the support and are counted as income to the custodial parent receiving the payment. States may disregard the first $50 a month received by an AFDC custodial parent, but they must pay for the food stamp benefit cost of doing so. This subtitle requires that all legally obligated child support payments be disregarded in determining the payor's food stamp eligibility and benefits and that the first $50 a month of child support received also be disregarded for the recipient household. No State cost-sharing is required.

Current food stamp rules effectively discourage child support payments. Parents paying legally binding child support payments are assumed to have that income available for food purchases. Custodial parents who are not receiving child support payments due them have no encouragement to help seek out the parent who owes support. The Committee's amendment would recognize the paying parent's reduced ability to buy food and encourage custodial parents ****409*32** to seek child support payments. It also would conform to the AFDC rule granting as $50-a-month disregard for child support payments.

Improving access to employment and training.–Food stamp households may deduct dependent care expenses related to work or education up to $160 a month per dependent, thereby increasing their food stamp benefits. If they have been assigned to an employment and training activity, a food stamp household can be reimbursed up to $160 a month per dependent for costs. Finally, they may be reimbursed up to $25 a month for training-related support costs other than dependent-care expenses. In the second two cases, the Federal Government shares half the cost of the employment and training support cost, although the State can choose to pay more without a Federal cost-share. This subtitle increases the limit on the dependent care deduction to $200 a month for each dependent under age two and $175 a month for other dependents, and State agencies could retain the $200 ceiling until recertification for children who reach their second birthday during a certification period. The subtitle also raises the limits on reimbursements to employment and training participants: (1) for dependent care costs, the limit is raised to the applicable local market rate (using AFDC procedures), but no less than the $200/$175 ceiling on dependent care deductions; (2) for non-dependent-care support costs (e.g., transportation), the limit is whatever the State agency chooses, but not less than $25 a month. In all cases involving employment and training dependent care and other support costs, the Federal share would continue to be 50 percent. Finally, the Committee's amendment makes clear that federally shared employment and training support costs include any work-related costs that are the same as those reimbursed under the AFDC program's Job Opportunities and Basic Skills (JOBS) program.

The Committee's amendments are intended to make the Food Stamp program's treatment of dependent care expenses and

employment and training program support costs consistent with those in the AFDC program. They also serve to increase Federal support for working food stamp recipients and employment and training activities for recipients.

Vehicles needed for employment or household transportation.–Household vehicles with a fair market ("blue book") value of more than $4,500 are counted as liquid assets to the extent their value exceeds $4,500. Certain types of vehicles are not counted (e.g., business vehicles). This subtitle raises the $4,500 threshold to $5,500 in fiscal year 1994, and, beginning with fiscal year 1995, indexes the $5,500 threshold to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers. It also excludes from the asset test the value of households' vehicles used to transport fuel for heating or water when each is the primary source of fuel and water for the household.

For nearly a decade, the Committee has heard recommendations to raise the $4,500 threshold above which the value of a vehicle is counted as an asset because it is a substantial limitation on the eligibility of those who are otherwise very poor and, especially, on those who need a car to work or look for work. Under Food Stamp program rules, the value of some cars, such as taxicabs or cars ****410*33** needed to transport disabled persons, are not considered assets at all. The value of other cars is counted, based on the higher of the fair market value in excess of $4,500 or the household's equity in any car in excess of the one per household. The $4,500 threshold was established by the Food Stamp Act of 1977 and has not changed since, despite substantial inflation. The Consumer Price Index for cars has risen over 125 percent since the threshold was set, and the President's Task Force on Food Assistance recommended in January 1984 that this limit be increased immediately to $5,500. In an economic downturn, this provision is important because the current threshold can deny food stamp benefits to households with little or no income who need their car to look for work or continue work. This subtitle's provisions are especially important to those in rural areas both because they may lack public transportation and therefore need cars to travel longer distances and because they need a vehicle to transport fuel or water. In places that still are not served by water mains, households may have to haul water for long distances. Many rural households also have to haul firewood or coal to their homes for heat, and a dependable vehicle is absolutely necessary for these necessities, particularly in winter months. The Committee expects that households will receive the benefit of this exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle.

Asset Accumulation Demonstration Projects.–This subtitle authorizes, for a period of up to four years, demonstration projects in which current food stamp recipients would be allowed to save up to $10,000 in assets designated and set aside for long-term self-sufficiency projects without losing their food stamp eligibility. Applicants with more than the normal $2,000/$3,000 in liquid assets would not be able to enter the program under the project, separate accounts would have to be established, and long-term goals would be limited to improving education, training, or employability, buying a house, changing residence, or making major household repairs.

The intent of these projects is to test the effects of keeping food stamp recipients from being terminated because they are saving money for specific purposes related to self-sufficiency. Although this provision is intended only to allow households that have initially met food stamp income and resource criteria to accumulate resources, rather than to grant benefits to more affluent households, the Committee expects its provisions to apply to households whose food stamp participation is interrupted for a few months. A provision intended to encourage self-sufficiency should not create disincentives for recipients to take temporary jobs.

SIMPLIFYING THE PROVISION OF FOOD ASSISTANCE

Simplifying the household definition.–Adults who live together with their parents or siblings must apply together as part of the same household, regardless of whether they purchase food and prepare meals separately (the normal test for whether individuals should apply together). In addition, a number of relatively complex rules are used to determine whether the elderly, disabled, and parents with children should apply together or separately. This subtitle ****411*34** would revise the household definition rules to require that persons who live together and purchase food and prepare meals separately may apply separately, except for spouses, parents and their children (21 years of age or younger) who do not live with their own spouses or children, and minors 18 years or younger (excluding foster children) who live under the parental control of another household member.

The Committee believes that the current household definition is too convoluted. The American Association of Food Stamp Directors has strongly criticized it as needlessly complex and error-prone. In addition, the Committee recognizes that more

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and more families and individuals must share housing because of high housing costs or unemployment. The amendment would remove the burden imposed on relatives who "double up" but still purchase food and prepare meals separately.

Children and parents in substance abuse treatment programs.–Persons entering residential alcohol and substance abuse treatment programs may participate in the Food Stamp program and use their food stamps to pay for meals served by the program; their children may not unless they remain outside the program. This subtitle allows food stamp eligibility for children who accompany their parents into alcohol and substance abuse programs.

A number of such programs have adopted policies encouraging parents and their children to live together while their parents are undergoing treatment. The Committee believes this is a positive goal, and the amendment removes the food stamp benefit loss that now accompanies a decision to bring children into residential substance abuse programs with their parents.

Resources of the disabled.–Eligible households without elderly members may have resources up to $2,000; the resource limit for elderly households is $3,000. This subtitle increases the resource limit for households with disabled members to $3,000, as with the elderly.

Elderly and disabled persons generally are treated in the same fashion by the Food Stamp program: e.g., they may claim medical expense deductions, they are exempt from the gross income test. This amendment removes the one exception to that rule by applying the same asset test to the elderly and the disabled.

Assuring adequate funding.–This subtitle would eliminate provisions for reducing food stamp benefits where the amount appropriated is insufficient. These reductions have never taken place, but the threat that an underestimate in the appropriations process might lead to benefit reductions has caused unnecessary paperwork and uncertainties for State and Federal administrators and recipients.

IMPROVING PROGRAM INTEGRITY

Use of information provided by retailers and wholesalers.–This subtitle authorizes the Agriculture Department to share information provided by participating retailers and wholesalers with State and Federal law enforcement and investigative agencies, with accompanying penalties for those who disclose the information inappropriately.

****412*35** The Committee believes that this amendment will expand the law enforcement resources available to counter food stamp fraud and help the Agriculture Department participate in other agencies' efforts to pursue broader conspiracies. The Department will be able to more closely cooperate with agencies such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Secret Service, and the Financial Crimes Enforcement Network.

Additional means of claims collection.–This subtitle authorizes expanded alternatives for collection of claims against food stamp recipients who have been overpaid benefits, except in the case of overpayments caused by State-agency errors. Overpayment collections would be authorized through offsets against Federal income tax refunds and Federal salaries.

Currently, the primary means of overpayment collection is to reduce future benefits to households on the program. When households leave the Food Stamp program, this amendment will provide an additional means of recouping claims that are rarely recoverable under current rules.

This amendment creates an exception to the Food Stamp program's privacy rules only to the extent necessary to accomplish claims offsets against federal employees' pay or federal income tax returns. The Committee expects that information not essential for such offsets will not be disclosed, and that any disclosures will be made under strict safeguards that will protect against further disclosures.

Demonstration projects to reduce food stamp trafficking.–This subtitle authorizes the Agriculture Department to use up to $4 million in fiscal year 1994 to fund demonstration projects testing innovative strategies for combating trafficking in food stamps (i.e., exchanging them for cash or other items). Trafficking is prohibited by the Food Stamp Act, but currently is regarded as one of the most widespread forms of food stamp abuse.

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IMPROVING FOOD STAMP PROGRAM MANAGEMENT

Technical amendments.–This subtitle corrects two inadvertent errors in the Food Stamp Act. It makes clear that those who are disqualified from food stamps for failure to meet workfare requirements may not reenter the program under rules that make cash welfare recipients categorically eligible for food stamps. It also makes clear that social security recipients are not exempt from the Food Stamp program's asset eligibility test. Finally, it places into law disqualification requirements for individuals and businesses committing fraud with "electronic access devices." Electronic benefit transfer systems using "ATM-like" cards to access food stamp benefits are replacing food stamp coupons in a growing number of areas across the country and fraud penalties are needed.

Penalties for trafficking.–Recipients trafficking in food stamps are disqualified for six months, one year, or permanently, for the first, second, and third offense, respectively. Retail and wholesale food concerns trafficking in food stamps are disqualified permanently on the first offense involving trafficking in food stamps (including trafficking in firearms, ammunition, explosives, or controlled substances) but the Agriculture Department may impose a civil money penalty of up to $20,000 per violation where the store's ****413*36** owners and management were not involved and had an anti-fraud program in place. The civil money penalties imposed cannot exceed $40,000 in any two-year period.

This subtitle requires that, in cases of recipient trafficking involving trading food stamps for firearms, ammunition, or explosives, disqualification would be permanent on the first offense. It also requires that, in cases involving trading food stamps for controlled substances, disqualification would be for one year on the first offense and permanent on a subsequent offense. In cases involving trafficking by retailers and wholesalers, this subtitle removes the $40,000 limit on any civil money penalties.

As the Committee has noted earlier, trafficking of food stamps is one of the most widespread areas of abuse, and trafficking involving firearms, ammunition, explosives, or controlled substances is to be particularly condemned. The amendment would strengthen penalties for trafficking in these items and establish similar penalties for both recipients and food concerns.

The food stamp quality control system.–Under the Food Stamp program's quality control system, samples of States' food stamp caseloads are surveyed annually to determine the rate of erroneous payments (overpayments, payments to ineligible households and underpayment). These "error rates" form the basis for assessing fiscal sanctions against States. If a State's combined error rate (overpayments, payments to ineligible households, and underpayment) is above a "tolerance level" now set at the national average combined error rate for that year or the lowest-ever national average combined error rate, plus one percentage point, it must pay a sanction. For example, if the national average combined error rate (including the one-percentage-point upward adjustment) is 10 percent, and a State's combined error rate is 12 percent, the State is assessed a sanction equal to 2 percent of food stamp benefits paid in the State that year. If a State's combined error rate is 14 percent, it is assessed a sanction of 4 percent of benefits paid. In measuring errors, errors resulting in the application of a new Federal policy are not counted during the first 60 days after the required implementation date (or 90 days at the discretion of the Agriculture Department).

This subtitle changes the way States' quality control fiscal sanctions are calculated and, in doing so, reduces them significantly. Under the new formula, a State will be assessed a sanction if its combined error rate is above a revised tolerance level: the national average combined error rate for that year, without any one percentage-point upward adjustment. The State's sanction will be determined by a "sliding scale" to equal an amount reflecting the degree to which the State's error rate exceeds the new tolerance level. For example, if the national average combined error rate is 10 percent (the new tolerance level, with no one percentage-point adjustment), and a State's combined error rate is 12 percent, the State would be assessed a sanction of .4 percent of food stamp benefits paid in the State that year: i.e., the State's error rate is two percentage points or 20 percent above the national average, and it is assessed a sanction representing 20 percent of the amount by which it exceeds the tolerance level. A State with a combined error rate of 14 percent would be assessed a penalty of 1.6 percent, or 40 percent ****414*37** of the amount by which it exceeds the 10 percent tolerance level. thus, the degree to which a State is assessed sanctions increases as its error rate rises, rather than having sanctions assessed equally on each dollar above the tolerance level. The new formula applies with respect to sanctions beginning with those for fiscal year 1992.

This subtitle also requires two studies of the food stamp quality control system. The Office of Technology Assessment is directed to undertake a study of measurement error, uniformity of error measurement, and other statistical issues and report the results and recommendations to the appropriate committees of Congress. This study should include practical

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recommendations about what reforms should be made to improve statistical accuracy. It is the intent of the Committee to review these recommendations and to consider legislation to implement any needed reforms. The amendment also directs the Agriculture Department to conduct a study of major factors that contribute to payment error rates and consistency of quality control reviews.

Since the last major revision of the food stamp quality control system in 1988, States have been concerned about the accuracy and fairness of the quality control system, and sanctions through fiscal year 1991 have been virtually forgiven. The Committee feels that States should be sanctioned in a graduated manner, depending on how far above acceptable error rates they are, and that States should be given a more reasonable grace period to implement changes in Federal food stamp law. These two measures represent a step toward potential overhaul of the quality control system. Other steps may be taken based on the results of the two required studies.

It is the Committee's intent that the new national performance measure will provide relief for those factors that are not unique to any one state agency, such as the effects of recession or program changes. However, the Committee recognizes that there will be unusual events with an uncontrollable impact on errors which affect state agencies with otherwise effective program administration. The Committee expects that these individual state situations will be addressed through the good cause waiver procedures. The Committee also expects that the Secretary's determination on states' good cause waiver requests will be based on good cause criteria, and not on such factors as budget considerations.

Uniform reimbursement rates.–The Federal Government pays 50 percent of most State costs related to administration of the Food Stamp program. However, costs related to automated data processing systems, fraud investigations and prosecutions, and the Systematic Alien Verification for Entitlement (SAVE) program (under which aliens' status can be verified with the Immigration and Naturalization Service) are reimbursed at 63 percent, 75 percent, and 100 percent rates, respectively. This subtitle reduces the Federal share for automated data processing, antifraud activities, and the SAVE program gradually over a three year period to the standard 50 percent and gives States a grace period in which to adjust their budgets to take account of reduced Federal cost-sharing.

The Committee's amendment is in response to an Administration proposal to make uniform the rate of Federal cost-sharing in public ****415*38** assistance (food stamps, the AFDC program, and Medicaid), programs typically administered by the same State agencies. It would ease problems associated with allocating costs among different administrative activities. Moreover, the reduction in Federal cost sharing takes into account a General Accounting Office study showing that, since States have now automated their food stamp operations, a higher Federal reimbursement rate is no longer needed and the fact that States' share of collected fraud claims will rise from 25 to 50 percent in October 1995, thereby providing an increased incentive for pursuing fraud.

Subtitle D of the bill contains several miscellaneous amendments. Section 1401 prohibits the Secretary and Commodity Credit Corporation from making assistance available to carry out the Market Program established under section 202 of the Agricultural Trade Act of 1978, at a level in excess of $147,734,000 for each of the fiscal years 1994 through 1998. This is a reduction of the current funding level of $200,000,000 per fiscal year. CBO estimates that this change will reduce government spending by $26 million in FY 1994 and by $234 million from FY 1994 through 1998.

The Forest Service administers lands that provide more opportunities for outdoor recreation than any other Federal agency. Activities include hiking, camping, skiing, off-road vehicle use, whitewater rafting, backpacking, hunting, caving, fishing, swimming, picnicking, boating, and sight-seeing. Use of the National Forest System for recreation purposes increased by 3 percent in 1991 and the Forest Service is strengthening recreation related programs through the implementation of its Resource Planning Act Program and National Recreation Strategy.

The Secretary of Agriculture estimates expenditures of $186.1 million for recreation management in fiscal year 1994. Under current authorities, the Secretary estimates collection of only $15.2 million in recreation user fees in fiscal year 1998. CBO estimates that the bill would provide the Secretary with the necessary authority to offset an additional $44 million through admission, entrance and user fees over a five year period.

The bill directs the Secretary to realize budget savings by increasing efficiencies in the administration of certain Department farm services. By consolidating personnel and duplicative overhead expenses starting in 1994, an estimated savings of $250

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million can be achieved by 1998.

Many agencies of the Department currently responsible for administering agriculture and related programs have adopted strong identities over the years, resulting in significant, numerous, and frequently duplicative bureaucracies within the Department. The Committee believes significant budget savings will be achieved by beginning the process of improving the overall efficiency of the Department by consolidating and streamlining certain services.

The Department has been criticized on a number of fronts–from its field office structure and multi-departmental jurisdictions to the adequacy of services, benefits and the required paperwork. The Committee believes that if the Department is going to effectively carry out its modern-day responsibilities, it must be able and willing to adjust the structure, the mentality, and the mandate of the current system. To adequately prepare the Department for a strong ****416*39** leadership role in the 21st century, a wholesale restructuring may be necessary.

The Committee recognizes that virtually all USDA programs–and, to a large extent, how and where they are administered–are creatures of Congress. The Congress, over the years, has written and passed the statutory language by which the bureaucracy is directed. Subsequently, it is the Congress, specifically the Agriculture Committee, who is accepting the responsibility to provide the appropriate legislative tools and guidance to facilitate necessary efficiencies.

The Committee anticipates that the Secretary will present a restructuring proposal for the Department in the near future. In the interim, the Subcommittee on Department Operations and Nutrition has begun the hearing process to receive testimony from various parties interested in this effort.

It is imperative that the Department provide useful and efficient services to farmers and consumers that are cost-effective to taxpayers–while maintaining economic growth and opportunity in rural America. There is an acute and strongly supported need to streamline and consolidate administrative functions relating to the services provided by USDA.

The bill amends certain provisions of the Environmental Conservation Acreage Reserve Program of the Food Security Act of 1985 in order to realize savings for the purpose of reducing the deficit. The bill reduces the total number of acres authorized to be enrolled in the Conservation Reserve Program through 1995 to a maximum of 38,000,000 from the current minimum of 40,000,000 and maximum of 44,000,000. The bill removes the current requirement to reserve 1,000,000 acres for enrollment in the program during 1994 but maintains this requirement for 1995. The committee feels that this reservation will be especially important in light of the deadline of January 1, 1995 for full compliance by producers with conservation plans as required by the Food Security Act of 1985. The Committee is aware of the existence of certain highly erodible croplands which can not be farmed in accordance with such a conservation plan.

The bill also amends the provisions of the Wetlands Reserve Program to require the Secretary to enroll not less than 330,000 acres by the end of calendar year 1995, and not less than 975,000 acres through the year 2000, which is a reduction of the current target of 1,000,000 acres by the year 1995. The bill directs the Secretary to use the funds of the Commodity Credit Corporation in order to carry out the changes in these programs.

The landmark Wetlands Reserve Program (WRP) was authorized in the FACT Act of 1990 to establish a balanced federal policy for the protection and restoration of agricultural wetlands. Prior to authorization of the WRP, federal policies protected agricultural wetlands primarily by imposing requirements or regulations on agricultural producers, in the form of the "swampbuster" policy and Section 404 of the Clean Water Act. The WRP was intended to balance requirements on farmers with incentives for farmers, in reflection of the principle that society receives much of the benefit of wetlands protection, therefore it is appropriate that society help bear some of the cost of that protection. An adequately funded Wetlands ****417*40** Reserve would contribute to a more flexible and realistic federal wetlands policy that protects valuable resources and the incomes of agricultural producers.

The Committee has mandated the funding of Wetlands Reserve enrollments for several reasons. First, the WRP will provide a significant number of agricultural producers with an economically sound wetland conservation option not otherwise available. The overwhelming interest that agricultural producers expressed in the WRP pilot program in 1992 is strong evidence that the Wetlands Reserve is an option that farmers and ranchers want and need. Second, through this action the committee reaffirms congressional intent that federal wetlands policy affecting agriculture should not only be comprised of

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requirements, restrictions or regulations. Incentives along with financial and technical assistance for agricultural producers must also be a significant and central part of federal wetlands policy.

Section 1404(b) amends section 1241 of the Food Security Act of 1985 to require the Secretary to use the funds of the Commodity Credit Corporation to implement the amendments made by section 1404.

In 1980, Congress expanded the Federal crop insurance program from a program covering a limited number of crops in a limited number of areas to a program that would make insurance against crop losses available to most agricultural producers in the United States. At the time, it was anticipated that the program would serve as the primary means for farmers to protect against crop losses caused by natural disasters. Unfortunately, the program has not achieved this goal.

Past ad hoc disaster assistance has been largely the result of an insufficient level of participation in the Federal crop insurance program. Participation in the program has remained relatively low even though the Government pays an average of 25 percent of the insurance premium and covers a substantial part of the program's administrative expenses as well as insurance losses in excess of the premium collected under the program.

The bill contains provisions that will reform the crop insurance program to provide a basic low level of insurance coverage to most agricultural producers–with additional coverage available to those producers who may wish to subscribe. The purpose of providing a basic low level of coverage at a minimal cost to the producer is to achieve a high level of participation in the program so as to ensure that the program will in fact meet its original objective of being the primary means for agricultural producers to protect against crop losses due to natural disasters.

CBO estimates that these provisions will result in additional outlays for this program of $204 million.

SECTION-BY-SECTION ANALYSIS

SUBTITLE A–COMMODITY PROGRAMS

Section 1101–Wheat Program

Section 1101(a) increases non-eligible payment acres (triple base acres) under the wheat program from 15% to 20% of the crop base for crop years 1994 through 1998.

****418*41** Section 1101(b) extends the provisions of the wheat price support program to ensure continued deficit reduction through fiscal year 1998.

Section 1102–Feed Grains Program

Section 1102(a) increases non-eligible payment acres (triple base acres) under the feed grains program from 15% to 20% of the crop base for crop years 1994 through 1998.

Section 1102(b) extends the provisions of the feed grains price support program to ensure continued deficit reduction through fiscal year 1998.

Section 1103–Upland Cotton Program

Section 1103(a) increases non-eligible payment acres (triple base acres) under the upland cotton program from 15% to 20% of the crop base for crop years 1994 through 1998.

Section 1103(b) extends the provisions of the cotton price support program to ensure continued deficit reduction through fiscal year 1998.

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Section 1104–Rice Program

Section 1104(a) increases non-eligible payment acres (triple base acres) under the rice program from 15% to 20% of the crop base for crop years 1994 through 1998.

Section 1104(b) extends the provisions of the rice price support program to ensure continued deficit reduction through fiscal year 1998.

Section 1105–Dairy Program

Section 1105(a) readjusts the purchase prices for butter (to no more than $0.65/pound) and nonfat dry milk (to no less than $1.034/pound) and nonfat dry milk (to no less than $1.034/pound) beginning on the date of enactment.

Sections 1105(b) extends the reduction in the price received by producers to the 1996 through 1998 calendar years at a level of 10 cents per hundredweight.

Section 1105(c) extends the provisions of the dairy price support and related programs to ensure continued deficit reduction through fiscal year 1998.

Section 1106–Tobacco Program

Section 1106(a) extends the marketing assessment on tobacco through the 1998 crop and increases the assessment by 10 percent for the 1994 through 1998 crops.

Sections 1106(b) and 1006(c) extend the provisions of the tobacco price support program to ensure continued deficit reduction through fiscal year 1998 and to improve the effectiveness of the program, respectively.

Section 1107–Sugar Program

Section 1107(a) extends the marketing assessment on cane sugar and beet sugar through the 1999 fiscal year and increases the assessment by 10 percent for fiscal years 1994 through 1999.

****419*42** Section 1107(b) extends the provisions of the sugar price support program to ensure continued deficit reduction through fiscal year 1999.

Section 1108–Oilseeds Program

Section 1108 extends the provisions of the oilseeds program, including the existing two percent loan origination fee, to ensure continued deficit reduction through fiscal year 1998.

The Committee passed an amendment by a vote of 26 yeas to 11 nays to eliminate the 2 percent loan origination fee on soybean loans and lower the soybean loan rate to $4.92. The Committee intends that should the necessary funds (estimated by the USDA to be $65 million over five years) become available during the reconciliation process, this issue may be revisited.

Section 1109–Peanut Program

Section 1109(a) imposes an additional marketing assessment of two percent of the national average quota or additional peanut support rate per pound for the 1993 through 1998 crops of peanuts. Producers and handlers of peanuts will each pay

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one-half of the additional assessment. Assessments collected will be used to defray realized losses of the peanut program.

Section 1109(b) extends the current 1% marketing assessment on peanuts through the 1998 crop and extends the provisions of the peanut price support program to ensure continued deficit reduction through fiscal year 1998.

Section 1109(c) extends assessments imposed under a marketing agreement entered into under the authority of section 8b of the Agricultural Adjustment Act (7 U.S.C. 608b), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to all peanut handlers, regardless of whether they have entered into such agreement.

Section 1109(d) establishes a temporary duty of $.55 per kilogram of imported peanut butter or peanut paste through July 31, 1996. Section 1109(d) also makes peanut butter subject to the import quota established for peanuts pursuant to section 22 of the Agricultural Adjustment Act of 1933 effective July 31, 1996.

Section 1110–Honey Program

Section 1110(a) reduces the minimum price support level for honey from 53.8 cents per pound to 50 cents per pound.

Section 1110(b) reduces the amount of payments that may be received by a producer from $125,000 in the 1994 crop year to $100,000 in the 1995 crop year, $75,000 in the 1996 crop year, and $50,000 in the 1997 and subsequent crop years.

Section 1110(c) extends the honey price support program to ensure continued deficit reduction through the 1998 crop.

Section 1110(d) eliminates the honey marketing assessment beginning in crop year 1994.

Section 1111–Wool and Mohair

Section 1111(a) reduces the amount of incentive payments that a producer may receive from $125,000 in the 1994 marketing year to $100,000 in the 1995 marketing year, $75,000 in the 1996 marketing ****420*43** year, and $50,000 in the 1997 and following marketing years.

Section 1111(b) reduces outlays by prohibiting the Secretary from deducting marketing charges in determining net sales proceeds for shorn wool and shorn mohair. This prohibition encourages improved quality and improves market access.

Section 1111(c) extends the price support program for wool and mohair to ensure continued deficit reduction through the 1998 marketing year.

Section 1111(d) eliminates the wool and mohair marketing assessment beginning in crop year 1994.

Section 1111(e) continues the current funding level for the wool and mohair promotion and marketing program.

Section 1112–Conforming Amendments to Continue Deficit Reduction Activities in Crop Years After 1995

Section 1112 extends various provisions related to the commodity price support programs through the 1998 crop year in order to ensure continued deficit reduction through fiscal year 1998.

SUBTITLE B–RESTRUCTURING OF LOAN PROGRAMS

Section 1201–Restructuring of Certain Loan Programs

Section 1201 amends section 305 of the Rural Electrification Act of 1936 by deleting current authority for the Rural Electrification Administration (REA) to make electric loans at 2% interest and by adding new subsections (c) and (d).

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New section 305(c)(1)(A) establishes a hardship loan program under which the Administrator is directed to make electric loans and charge interest of 5% annually, if–

(1) the average revenue per kilowatt-hour sold by the applicant is not less than 120 percent of the State average;

(2) the average residential revenue per kilowatt-hour sold by the applicant is not less than 120 percent of the state average; and

(3) the average per capita income (or median household income) of residents in the service area of the applicant is less than the State average.

New section 305(c)(1)(B) authorizes the Administrator to make 5% hardship loans to applicants that, in the discretion of the Administrator, have experienced a severe hardship. Section 305(c)(1)(C) provides that no hardship loan may be made to an applicant if the average number of consumers per line mile of the system exceeds 17 and the purpose of the loan is to furnish or improve service to an urban area.

New section 305(c)(2) establishes a municipal rate loan program under which the Administrator is directed to make electric loans and charge interest at a rate equal to the current market yield on municipal bonds of similar maturities. Section 305(c)(2) limits the interest that may be charged under the program to 7% if–

(1) the average of subscribers does not exceed 5.5 per line mile; or

(2)(A) the average revenue per kilowatt-hour sold by the applicant is not less than the State average; and

****421*44** (B) the average per capita income (or median household income) of residents in the service area of the applicant is less than the State average.

Section 305(c)(2) provides that the program's 7% interest rate cap will not apply to certain borrowers with more than 17 subscribers per line mile if the purpose of the loan is to furnish or improve electric service to consumers in an urban area. Section 305(c)(2) also allows borrowers to select the term of their loan repayment, up to 35 years, makes available a prepayment option to borrowers and prohibits the Administrator from requiring that borrowers obtain credit elsewhere as a condition of obtaining an REA electric loan.

New section 305(d) deletes the current authority for the REA to make telephone loans at 2% interest and establishes a multi-leveled telephone loan program.

New section 305(d)(1) establishes a hardship loan program under which the Administrator is directed to make telephone loans and charge interest of 5% annually, if–

(1) the average number of subscribers per line mile in the loan applicant's service area is not more than 4;

(2) the applicant is capable of producing income not less than that necessary to service interest requirements on all outstanding debt and not more than three times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State and, if a borrower-developed plan, the applicant is a participant in the plan.

New section 305(d)(1)(B) authorizes the Administrator to waive the income requirement in (2) above, under certain emergencies or in the case of severe hardship. Section 305(d)(1)(C) allows applicants to request a Rural Telephone Bank loan if funds for the hardship loan program are exhausted.

New section 305(d)(2) establishes a cost-of-money loan program under which the Administrator is directed to make telephone loans and charge interest at a rate equal to the current cost of money to the Federal Government and limits the

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interest that may be charged under the program to 7% if–

(1) the applicant's average number of subscribers does not exceed 15 per line mile;

(2) the applicant is capable of producing income not less than that necessary to service interest requirement on all outstanding debt, and not greater than five times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State and, if a borrower-developed plan, the applicant is a participant in the plan.

New section 305(d)(2)(B) requires the Administrator to offer cost-of-money loan program applicants the option to include in the loan agreement the right of the applicant to prepay.

New section 305(d)(2)(C) requires the Administrator, on the request of a cost-of-money loan program applicant, to–

(1) consider the application to be for a Rural Telephone Bank (RTB) loan; and

****422*45** (2) if the applicant is eligible for such an RTB loan, make a cost-of-money loan to the applicant concurrently with an RTB loan, in specified amounts from each program.

New section 305(d)(2)D) allows applicants to request an REA loan guarantee if funds for the cost-of-money loan program are exhausted.

New section 305(d)(3) requires that a telecommunications modernization plan be approved for the State in order for borrowers in the State to be eligible for telephone loans and allows States 6 months after final regulations for the program are promulgated to develop the plan, after which time the Administrator must approve a plan developed by a majority of the telephone borrowers in the State. New section 305(d)(3) also establishes criteria for the modernization plan and prohibits the disapproval of the plan once it has been approved by the Administrator.

Section 1201(a)(2) amends section 408 of the Rural Electrification Act of 1936.

The new provisions of section 408 clarify the purposes of the Rural Telephone Bank (RTB) program and provide that the RTB may make a loan to an applicant only if–

(1) the average number of subscribers in the applicant's service area does not exceed 15 per line mile;

(2) the applicant is capable of producing income not less than that necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State, and, if a borrower-developed plan, the applicant is a participant in the plan.

The new provisions of section 408 allow prepayment of RTB loans at face value, and set out requirements that the RTB must use funds from such pre-payments to repay obligations issued to the U.S. Treasury under section 407(b) of the Rural Electrification Act (REAct).

The new provisions of section 408 also require the Governor of the RTB, on the request of an RTB loan applicant, to–

(1) consider the application to be for a Rural Telephone Bank (RTB) loan under section 408 and for a REA cost-of-money telephone loan program under section 305(d)(2) of the REAct; and

(2) if the applicant is eligible for such an REAct loan, make a cost-of-money loan to the applicant concurrently with an REA loan, in specified amounts from each program.

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The new provisions of section 408 also allow applicants to request an REA cost-of-money program loan if funds for RTB loans are exhausted, and require RTB loans and advances made on or after November 5, 1990 to bear an interest rate as determined under section 408 of the REAct.

Section 1201(a)(3) amends section 314 of the Rural Electrification Act of 1936 to require that loans be made for the REA electric and telephone programs at the following levels:

(1) Electric hardship loans–$125 million per year, adjusted for inflation after 1994.

(2) Electric municipal rate loans–$600 million per year, adjusted for inflation after 1994.

****423*46** (3) Telephone hardship loans–$125 million per year, adjusted for inflation after 1994.

(4) Telephone cost-of-money loans–$198 million per year, adjusted for inflation after 1994.

Section 1201(a)(5) amends sections 2 and 4 of the Rural Electrification Act of 1936 (REAct) to clarify that the rural electric loan program may be used to furnish and improve electric service, including assistance to borrowers to implement demand side management programs.

Section 1201(a)(5)(C) amends section 7 of the REAct to extend section 306(b) of the Consolidated Farm and Rural Development Act (regarding rural water associations) to prohibit municipal and other utilities from co-opting rural electric and telephone cooperatives from continuing to service certain territories.

Section 1201(a)(5)(D) amends section 13 of the REAct to change the definition of "rural area" from those areas not within a town in excess of 1,500 inhabitants, to those areas not within an urban or urbanized area, as defined by the Bureau of the Census.

Section 1201(a)(5)(E) amends section 203(b) of the REAct to change the definition of "rural area" for the purposes of title II of the REAct from those areas not within a town in excess of 1,500 inhabitants, to those areas not within a town in excess of 5,000 inhabitants.

Section 1201(a)(5)(F) amends section 307 of the REAct to limit the REA's ability to require borrowers to obtain credit elsewhere to an amount not in excess of 30% of the credit needs of the applicant.

Section 1201(a)(5)(G) amends section 406 of the REAct to authorize the RTB to invest certain funds in obligations of the United States.

Section 1201(a)(5)(H) amends section 18 of the REAct to prohibit the Administrator of REA and the Governor of the RTB from charging any fee or charge (including any loan origination fee) not expressly provided for in the Act in connection with any loan under the Act.

Section 1201(a)(5)(I) adds a new section 306C to the REAct to provide that–

(1) a distribution borrower not in default on the repayment of any loan made or guaranteed under the Act shall be eligible for a loan, loan guarantee, or lien accommodation; and

(2) for the purpose of determining such eligibility, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

Section 1201(a)(5)(I) also adds a new section 306D to the REAct to prohibit the REA Administrator from–

(1) requiring prior approval of;

(2) imposing any requirement, restriction, or prohibition with respect to the operations of; or

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(3) denying or delaying the granting of a lien accommodation to,

any electric borrower whose net worth exceeds 110 percent of the outstanding principal balance on all loans made or guaranteed to the borrower by the Administrator.

****424*47** Section 1201(b) amends section 306(a)(1) of the Consolidated Farm and Rural Development Act to expand the eligibility for water and waste loans under such Act to include any borrower to whom a loan has been made under the REAct.

Section 1202–Reorganization of Rural Development Functions

Section 1202 amends the REAct to transfer the authorities and responsibilities for the administration of the REAct to the Rural Development Administration (RDA) within the Department of Agriculture.

The RDA Administrator is directed to appoint a Deputy Administrator for Rural Utilities who shall administer the telephone, electric, and rural water and waste disposal programs.

The RDA Administrator is authorized to appoint Assistant Administrators for the telephone, electric, and water and waste disposal programs. In addition, an Assistant Administrator may be appointed to be responsible for the rural utility technical engineering standards and specifications and other utility management and accounting functions assigned by the Administrator.

The bill clarifies that borrowers under the current REA program become eligible to participate in all programs under the RDA.

The RDA Administrator is required to establish a technical assistance unit to provide all borrowers with advice and guidance on community and economic development activities.

SUBTITLE C–FOOD STAMP PROGRAM

Section 1301–Short title

Section 1301 provides that the bill may be cited as the “Mickey Leland Childhood Hunger Relief Act”, and sets out the table of contents of the bill.

Section 1302–References to Act

Section 1302 provides that references in the bill to “the Act” are references to the Food Stamp Act of 1977.

Chapter I–Ensuring Adequate Food Assistance

Section 1311–Maximum benefit level

Section 1311 amends the definition of “thrifty food plan” in section 3 of the Act to raise basic food stamp benefits. The thrifty food plan is the cost of the diet required to feed a family of four adjusted by household size. The cost of such diet is the basis of the food stamp allotments for households. These allotment levels are adjusted every October to reflect food costs under the thrifty food plan for the previous June.

Food stamp benefits are currently set at 103% of the cost of the thrifty food plan. Under section 1311, food stamp benefits will be based on 104% of the thrifty food plan beginning in fiscal year 1994.

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Section 1312–Helping low-income high school students

Section 1312 amends section 5 of the Act to exclude the income of elementary and secondary school students 21 years of age or under for the purpose of calculating eligibility and benefit levels for ****425*48** the Food Stamp Program. Current law excludes the income of students only up to their eighteenth birthday.

Section 1313–Families with high shelter expenses

Section 1313 amends section 5(e) of the Act to provide that households without elderly or disabled members, for purposes of determining Food Stamp Program eligibility and benefit levels, may deduct from income high shelter costs in the same way that elderly and disabled households do at present. Under current law, all households may deduct shelter expenses that exceed 50% of their net incomes (after all other deductions have been allowed), but this deduction is capped, currently at $200 a month in the 48 contiguous States, for households that do not contain elderly or disabled members.

Section 1313 removes the cap for such households effective October 1, 1994. In the interim, it establishes increased shelter deduction caps for fiscal year 1994.

Section 1314–Resource exclusion for earned income tax credits

Section 1314 amends section 5(g) of the Act to exclude all earned income tax credits (EITCs) received by households from consideration as resources for one year following their receipt. The exclusion would apply if the households were participating in the Food Stamp Program when they received the EITCs and do not have a break in participation during the one-year period. If a break in a household's participation in the Food Stamp Program occurs, any amount of an EITC remaining would be counted as a resource upon reapplication for participation in the Food Stamp Program. Current law requires that EITCs be fully excluded in the month they are received and in the next month, but if households have retained them after the second month, they are counted as resources.

Section 1315–Homeless families in transitional housing

Section 1315 amends section 5 of the Act to exclude from income, for purposes of determining Food Stamp Program eligibility and allotment levels, the full amount of vendor payments (payments made to third parties) for transitional housing for homeless households.

The Food Stamp Act generally excludes vendor payments from calculations of food stamp income except those made for normal living expenses such as housing. However, in those states that have shelter allowance components within their payments to families under the Aid To Families with Dependent Children (AFDC) program, current law excludes that portion of the vendor payments for transitional housing for the homeless up to an amount equal to half of the state's AFDC maximum shelter allowance. The amount of a vendor payment that exceeds the AFDC maximum shelter allowance is also excluded. (The majority of states have no separate AFDC shelter allowance, and therefore the entire vendor payment is excluded for the purposes of the Food Stamp Program under the general rule to exclude vendor payments. This section would treat vendor payments for transitional housing the same in all states by excluding the entire vendor payment from income for purposes of determining Food Stamp Program eligibility and allotment levels.)

****426*49** Section 1316–Households benefiting from general assistance vendor payments

Section 1316 amends section 5 of the Act to include only general assistance (GA) vendor payments provided for housing expenses, but excluding energy or utility-cost assistance, as income for determining food stamp eligibility and benefit levels.

Under current law, GA vendor payments are excluded from consideration as income if they are made under state laws that prohibit making direct cash GA payments to households. In other states, they are counted as income if they are made for

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normal living expenses.

Section 1317–Continuing benefits to eligible households

Section 1317 amends the definition of "initial month" in section 8 of the Act to mean the first month for which an allotment is issued to a household following any period of more than one month in which the household was not participating in the Food Stamp Program, after previous participation in the program.

The effect of this provision is that eligible households reapplying or recertified during the first month following the end of their prior certification period will receive full benefits, rather than pro-rated benefits as required by current law, for that month. This treatment currently applies to migrant and seasonal farmworkers.

Section 1318–Improving the nutritional status of children in Puerto Rico

Section 1318 amends section 19 of the Act to increase funding for the Nutrition Assistance Program (NAP) in Puerto Rico. In 1981, the Food Stamp Act was amended to replace the Food Stamp Program in Puerto Rico with a block grant, the Nutrition Assistance Program. For 1994, the block grant funding for NAP funding is increased from $1.091 billion to $1.111 billion; and for 1995 it is increased from $1.133 billion to $1.158 billion.

Chapter II–Promoting Self-sufficiency

Section 1321–Income exclusion for education assistance

Section 1321 amends section 5 of the Act to require that all education assistance be excluded from consideration as income for purposes of determining Food Stamp program eligibility and allotment levels. Under current law, federal education assistance under title IV of the Higher Education Act and the Perkins Act, such as loans, grants, scholarships, and fellowships, is excluded. However, federal aid outside of these Acts and non-federal aid is currently counted. This amendment would exclude all education assistance.

Section 1322–Child support payments to non-household members

Section 1322 amends section 5 of the Act to exclude from consideration as income for purposes of determining Food Stamp Program eligibility and allotment levels any child support payments a household member makes to support a child outside of the household, if the payments are a legal obligation. Current law provides no such exclusion.

****427*50** Section 1322 also authorizes the Secretary to prescribe by regulation the method or methods that State agencies may use to determine the amount of the child support to be actually excluded. These methods may include calculation of the exclusion retrospectively.

Section 1323–Child support exclusion

Section 1323 amends section 5 of the Act to exclude from consideration as household income in determining Food Stamp Program eligibility and allotment levels the first $50 a month received for child support, including those payments made on time but received in a later month. Under current law, the State agency has the option to exclude the first $50 in child support payments received by households participating in the AFDC program, but must reimburse to the Federal government, from state funds, the value of increased food stamp benefits. The current exclusion for child support payments to AFDC households is retained and the requirement for states to reimburse the Federal government is deleted.

Section 1324–Improving access to employment and training activities

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Section 1324(a) amends section 5 of the Act to raise the current dependent care deduction, allowed in computing household income for purposes of determining program eligibility and benefit levels, from $160 a month for each dependent to $200 a month for children under age 2 and $175 a month for other dependents. Current law permits a dependent care deduction when dependent care enables a household member to work or look for work, or engage in education or training in preparation for employment.

Section 1324(b) amends section 6 of the Act to raise the limit on reimbursements to recipients participating in employment and training (E&T) programs for costs related to E&T activities. Current law limits dependent care reimbursements to $160 per dependent per month and other reimbursements to $25 per month per person and explicitly requires states to exempt from participation in E&T activities those households whose dependent care costs would exceed the reimbursement. Section 204 raises dependent care reimbursements to the applicable local market rate as determined using procedures consistent with those used for AFDC E&T programs, but no less than the cap on the dependent care deduction ($200 for children under 2 years old and $175 for other dependents).

Section 1324(b) also clarifies that State agencies may reimburse any work-related, non-dependent care costs for E&T participants that they reimburse for AFDC's Job Opportunities and Basic Skills Training Program (JOBS). It further stipulates that State agencies can set the reimbursement limit for work-related, non-dependent care costs at any level, but not less than $25 a month.

Section 1324(c) makes a conforming change to the Act in section 16 to raise the amounts of E&T dependent care and other work-related reimbursements made by State agencies to recipients for which State agencies will be reimbursed (at the normal fifty percent rate) by USDA, consistent with the increase in such reimbursements to recipients.

****428*51** Section 1325–Vehicles needed to seek and continue employment and for household transportation

Section 1325 amends section 5 of the Act to require an annual adjustment of the asset threshold for the fair market value of vehicles owned by households. Current law imposes the eligibility requirement, generally, that households not have assets above $2,000 if they do not contain an elderly member, or $3,000 if they do contain an elderly member. The amount of the fair market value of each household vehicle (other than those that are totally disregarded) that exceeds $4,500 is calculated toward the asset limit. Section 205 raises the threshold to $5,500 for fiscal year 1994 and then requires that the $5,500 threshold be adjusted, beginning on October 1, 1994, and on each October 1 thereafter, to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for new cars, rounded to the nearest $50.

Section 1326–Vehicles necessary to carry fuel or water

Section 1326 amends section 5 of the Act to exclude from financial resources, for purposes of determining Food Stamp Program eligibility, a vehicle that is used by a household to transport fuel for heating or water when that fuel or water is the primary source for the household. Current law provides no such exclusion.

Section 1327–Demonstration projects testing resource accumulation

Section 1327 amends section 17 of the Act to authorize the Department to conduct, under terms and conditions prescribed by the Department, demonstration projects allowing households already receiving food stamp benefits to accumulate up to $10,000 in resources and remain eligible for program participation. Separate accounts would have to be established and designated for a specific goal that could provide self-sufficiency. Such goals would be limited to improving the education, training, or employability of household members, buying a house for the household's use, changing the household's residence, or making major household repairs. This amendment would limit to $100 million the total value of food stamp benefits that could be expended in the demonstration projects.

Chapter III–Simplifying the Provision of Food Assistance

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Section 1331–Simplifying the household definition for households with children and others

Section 1331 amends section 3 of the Act to delete a provision that requires siblings living together and parents living with adult children to be considered as one household even if they do not purchase and prepare meals together.

In doing so, section 1331 amends the definition of "household" in section 3 of the Act to include (1) an individual who lives alone, (2) an individual who lives with others but customarily purchases food and prepares meals separate and apart from the others, and (3) a group of individuals who live together and customarily purchase food and prepare meals together. Parents and their children 21 years of age or younger (who are not themselves parents living ****429*52** with their children or married living with their spouses) who live together, children under the age of 18 who live with and are under the parental control of a person other than their parent (with the exception of foster children) together with that person, and spouses who live together would continue to be treated as a group of individuals who customarily purchase and prepare meals together even if they do not do so.

Section 1332–Eligibility of children of parents participating in drug or alcohol treatment programs

Section 1332 amends section 3 of the Act to provide Food Stamp Program eligibility to children living with their program eligible parents in a drug or alcohol rehabilitation center. Current law provides eligibility for the parents but not for the children who reside with the parents in these centers.

Section 1333–Resources of households with disabled members

Section 1333 amends section 5 of the Act to increase the resource limit for determining Food Stamp Program eligibility from $2,000 to $3,000 for any household containing a disabled member.

Under current law, most households have a resource limit of $2,000, while those containing at least one elderly member have a $3,000 limit. This amendment extends to households containing a disabled member the $3,000 limit available now for households with an elderly member.

Section 1334–Assuring adequate funding for the Food Stamp Program

Section 1334 amends section 18 of the Act to change from monthly to quarterly the requirement that the Secretary submit a report to Congressional committees setting forth the Secretary's best estimate of food stamp program expenditures, and stating whether there is reason to believe that supplemental appropriations will be needed to support the operation of the Food Stamp Program. Section 1334 also deletes provisions that authorize the reduction of benefits to households and notification to States if the Secretary of Agriculture determines that Food Stamp Program funding is insufficient.

Chapter IV–Improving Program Integrity

Section 1341–Use and disclosure of information provided by retail food stores and wholesale food concerns

Section 1341 amends section 9(c) of the Act to expand the use and disclosure of information provided by retail food stores and wholesale food concerns, including sales and food stamp redemption information, to State and Federal law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act or other Federal or State laws. Use and disclosure of this information is currently restricted to persons directly connected with the administration and enforcement of the Food Stamp Program, as well as State agencies that administer the Special Supplemental Food Program for Women, Infants and Children (WIC). The amendment also establishes penalties to be imposed ****430*53** against those who publish, divulge, or disclose to any extent not authorized by federal law any of the information obtained pursuant to this amendment.

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Section 1342–Additional means of claims collection

Section 1342 amends sections 11(e)(8) and 13 of the Act to expand alternatives for collecting claims against households for overissued food stamp benefits. The amendment establishes permanent authority relating to Federal income tax refund offsets and establishes permanent authority to collect food stamp claims by offsetting Federal salaries and pensions.

The amendment to Section 11(e)(8) makes an exception to the current disclosure restrictions so that information obtained from former food stamp recipients can be provided to certain Federal agencies for specific purposes. The purpose of providing the information to Federal agencies is to collect overpayments from Federal income tax refunds, Federal salaries, and other Federal payments. The Federal agencies included are the Internal Revenue Service, the United States Postal Service, and the Department of Defense. Currently, disclosure of information obtained from program participants is limited to (1) persons directly connected with administration or enforcement of the Food Stamp Program, other Federal assistance programs, or federally assisted State programs, (2) the U.S. Comptroller General for audit or examination otherwise authorized by law, and (3) local, State or Federal law enforcement officials for purposes of investigating a violation of the Food Stamp Program.

Section 13 is amended to expand claims collection alternatives for overpaid food stamp benefits. Currently, State agencies are required to collect claims arising from household errors from participating households through allotment reduction unless the household elects other means of repayment. Allotment reductions are limited to 10 percent of the monthly allotment or $10 a month if that would result in more rapid collection. Claims arising from intentional household errors must be repaid by the food stamp household by allotment reduction or cash payment. The amendment authorizes collection by Federal salary or tax offset for these types of claims. Collection of these debts from Federal tax refunds due individuals no longer participating in the Food Stamp Program has been started under the general demonstration project authority of Section 17(b) of the Food Stamp Act. However, the IRS requires that debts referred for collection from tax refunds not include any debts which could be collected from Federal salaries. The Committee understands that to comply with this requirement, the Department also plans to test salary offset. The amendment will enable the Department to make these collection methods permanent for food stamp claims.

Section 1343–Demonstration projects testing activities directed at street trafficking in coupons

Section 1343 amends section 17 of the Act to authorize the Department to conduct several demonstration projects in fiscal year 1994 to address the problem of street trafficking. The amendment authorizes expenditure of $4 million from the funding provided for ****431*54** demonstration projects to conduct projects in which State or local food stamp agencies can test new ideas for working with State or local law enforcement agencies to investigate and prosecute street food stamp trafficking. “Trafficking” refers to a transaction in which food stamps are traded for cash or other goods, usually at a rate significantly below their benefit value. Trafficking in food stamps is prohibited by the Food Stamp Act.

Chapter V–Improving Food Stamp Program Management

Section 1351–Clarification of categorical eligibility

Section 1351 amends sections 5 (a) and (j) of the Act to add to the exceptions for categorical eligibility for the Food Stamp Program those households disqualified from the program for failure to comply with the requirements of a food stamp workfare program. Current law already excludes from categorical eligibility all other individuals or households disqualified from program participation. Categorical eligibility for the Food Stamp Program is provided for recipients of Aid for Families with Dependent Children (AFDC), Supplemental Security Income (SSI), benefits under the SSI substitute program in the Territories (under Titles I, X, XIV, and XVI of the Social Security Act), and certain general assistance provided by the States to people with low income.

The amendment also clarifies a description of the SSI-substitute program in the Territories by removing a reference to Title II of the Social Security Act in section 5(j) of the Food Stamp Act. The reference to Title II was inadvertently added by section 905 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991.

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Section 1352–Technical amendments related to electronic benefit transfer

Section 1352 amends sections 6(b) and 12(b) of the Act to make technical corrections. Most Food Stamp Act references to food coupons and authorization cards have previously been amended to include references to the access devices used for electronic benefit transfer. This amendment makes similar amendments to provisions concerning disqualifications of individuals for intentional program violations and imposition of civil money penalties against or disqualification of retail food stores for trafficking.

Section 1353–Disqualification of recipients for trading firearms, ammunition, explosives, or controlled substances for coupons

Section 1353 amends section 6(b) of the Act to require a one year disqualification from Food Stamp Program eligibility of food stamp recipients on the first occasion of a finding of their trading controlled substances for food coupons, and permanent disqualification on the second such finding. This amendment also requires permanent disqualification from Food Stamp Program eligibility on a finding of trading of firearms, ammunition, or explosives for food coupons.

****432*55** Section 1354–Uncapped civil money penalty for trafficking in coupons

Section 1354 amends section 12(b) of the Act to remove the provision which caps a civil money penalty imposed on a retailer for trafficking at $40,000 in a 2-year period. The statutory limit on monetary penalties for trafficking is currently $20,000 per trafficking violation. Because most trafficking offenses by a retailer involve more than one violation, it is possible that a firm would reach the $40,000 cap on the first offense, and further trafficking could occur by that firm without any additional sanction for trafficking during the next 2 years.

Section 1355–Uncapped civil money penalty for selling firearms, ammunition, explosives, or controlled substances for coupons

Section 1355 amends section 12(b) of the Act to remove the provision which caps at $40,000 in a two year period the civil money penalty that can be imposed on an authorized retailer for selling firearms, ammunition, explosives, or controlled substances in exchange for food stamps. The statutory limit of $20,000 per violation is retained.

Section 1356–Modifying the food stamp quality control system

Section 1356 amends section 16 of the Act to change the method by which State agency penalties are established under the Food Stamp Program quality control system. The amendment requires the use of an annual national average and a sliding scale to determine the level of penalty, beginning with the penalties to be assessed for fiscal year 1992. Penalties are to be assessed for error rates in excess of the national average combined error rate (overpayments, payments to ineligible households, and underpayments) announced for each fiscal year. Current law requires use of the lowest-ever combined error rate, or the current year's error rate if lower, plus one percentage point as the tolerance level above which sanctions are assessed. Under the amendment, sanctions will be adjusted to reflect how far above the national average tolerance level a state's combined error rate is. Current law requires that sanctions equal the full value of erroneous benefit decisions. The amendment also extends from 60 days (or 90 days at the discretion of the Secretary) to 120 days the period immediately following the implementation date of a change to regulations affecting program eligibility or benefits determinations within which a state will be held harmless for errors made in implementing the change.

Section 1356 directs the Office of Technology Assessment to undertake a study of measurement error in the food stamp quality control system and report with recommendations to the appropriate Congressional committees no later than 12 months after enactment of this subtitle. This section also directs the Secretary to conduct a study of major causal factors which contribute to the payment error rate. The Secretary shall also conduct controlled experiments to determine the degree of uniformity in quality control error rate measurements. The Secretary must report with recommendations to the appropriate

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Congressional committees no later than 2 years from the date of enactment of this subtitle.

****433*56** Chapter VI–Uniform Reimbursement Rates

Section 1361–Uniform reimbursement rates

Section 1361 amends section 16 (a), (g), and (j) of the Act to revise the authority under which Federal funding is provided by the Department for certain costs State agencies incur in their administration of the Food Stamp Program. While the Department generally funds 50 percent of a State agency's food stamp administrative costs, there are several areas where enhanced Federal funding is provided. The proposal would make uniform at the 50 percent matching rate Federal funding for most food stamp administrative costs. Enhanced funding would remain available for carrying out the employment and training program, administering the Food Stamp Program on Indian reservations, and as an incentive for improving payment accuracy by State agencies.

Enhanced funding for planning, designing, developing, or installing automated data processing and information retrieval systems would be reduced from the current level of 63 percent (scheduled to rise to 75 percent in fiscal year 1995 under current law) to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. The amendment also reduces Federal funding for State agencies' costs of investigating and prosecuting food stamp fraud from the current 75 percent to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. It should be noted that there are other incentives in the Food Stamp Act to encourage State agencies' anti-fraud activities. For example, State agencies retain 25 percent of any amounts successfully recovered from fraud losses. Finally, the amendment reduces Federal funding for State agencies' use of the Systematic Alien Verification for Entitlement program administered by the Immigration and Naturalization Service from 100 percent to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996.

The amendment also stipulates that these reductions in federal match rates shall apply to payments to States for expenditures after either the end of the State fiscal year that ends during calendar year 1994, or in the case of a State with a State legislature which is not scheduled to have a regular legislative session in calendar year 1994, the end of the State fiscal year that ends during 1995.

Chapter VII–Implementation and Effective Dates

Section 1371–Implementation and effective dates

Section 1371 provides that sections 1312, 1315, 1316, 1317, 1322, 1323, 1326, 1331, 1333, and 1353 will become effective and be implemented on July 1, 1994. The quality control reforms of section 1356(a)(1) and (3) are effective October 1, 1991. Other provisions of the bill will become effective and must be implemented on October 1, 1993.

****434*57** SUBTITLE D–MISCELLANEOUS PROVISIONS

Section 1401–Maximum expenditures under the market promotion program for fiscal years 1994 through 1998

Section 1401 amends section 211(c)(1) of the Agricultural Trade Act of 1978 by reducing funding for the market promotion program to $147,734,000 from $200,000,000 per fiscal year for each of fiscal years 1994 through 1998.

Section 1402–Admission, entrance, and recreation fees

Section 1402(a)(1) authorizes the Secretary of Agriculture to charge entrance or admission fees at National Monuments, National Volcanic Monuments, National Scenic Areas, and areas of concentrated public use administered by the Secretary.

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Section 1402(a)(2) authorizes the Secretary to charge recreation use fees at lands administered by the Secretary for specialized outdoor recreation sites, equipment, services, or facilities (including visitors' centers, picnic tables, boat launching facilities, or campgrounds).

Section 1402(b) clarifies that the amount of the admission, entrance, and recreation use fees will be determined by the Secretary.

Section 1402(c) defines the terms "area of concentrated public use", "boat launching facility", "campground", and "Secretary" for purposes of section 1402.

Section 1403–Additional Program Changes to Meet Reconciliation Requirements

Section 1403 directs the Secretary to consolidate personnel and field, regional, and national offices of agencies within the Department of Agriculture in order to reduce personnel and duplicative overhead expenses, such that Department expenditures are reduced by–

(1) $90,000,000 in fiscal year 1995;

(2) $97,000,000 in fiscal year 1996;

(3) $135,000,000 in fiscal year 1997; and

(4) $178,000,000 in fiscal year 1998;

In developing legislation to provide for the consolidation of personnel and field, regional, and national offices of the Department of Agriculture, the Committee intends that the Secretary should work closely with representatives of those persons most affected by Department of Agriculture programs.

The Committee intends to seek similar input as it develops legislation in this regard.

Section 1404–Environmental Conservation Acreage Reserve Program Amendments

Section 1404(a) amends section 1231(d) of the Food Security Act of 1985 to limit the enrollment of land in the Conservation Reserve Program to not more than 38 million acres through calendar year 1995 and to direct the Secretary to reserve 1 million acres for enrollment in the program during calendar year 1995.

Section 1404(a) also amends section 1237(b) of the Food Security Act of 1985 to require the Secretary to enroll in the Wetlands Reserve ****435*58** Program not less than 330,000 acres by the end of calendar year 1995, and not less than 975,000 acres through the year 2000.

Section 1404(b) amends section 1241 of the Food Security Act of 1985 to require the Secretary to use the funds of the Commodity Credit Corporation to implement the amendments made by section 1404.

Section 1405–Levels of Insurance Coverage Under the Federal Crop Insurance Act

Section 1405(a) amends the Federal Crop Insurance Act (FCIAct) by adding a new section 508B.

New section 508B(a) directs the Federal Crop Insurance Corporation to make available four levels of insurance coverage to producers of agricultural commodities based upon the percentage loss in yields.

New section 508B(a)(1) requires that coverage level I shall be available only to producers who do not purchase insurance at coverage levels II, III, or IV. Coverage level I must provide indemnification to producers for losses in yields to the extent that

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such losses exceed 65 percent of the determined yield of the commodity for the farm.

New section 508B(a)(2) requires that coverage levels II, III, and IV must provide indemnification to producers for losses in yields to the extent that those losses exceed 50, 35, and 25 percent, respectively, of the average proven yield for the commodity for the farm based on actual documented production history, or on an approved estimate.

New section 508B(b) defines the term "determined yield" for the purposes of section 508B(a)(1).

New section 508B(c) provides that a producer may elect to use the Agricultural Stabilization and Conservation Service yield for a crop of a commodity for a farm rather than the determined yield for the farm for coverage levels II, III, and IV, subject to an additional premium for the coverage. The Corporation is prohibited from providing any premium subsidy or administrative subsidy in connection with such additional coverage.

New section 508B(d) provides that the Corporation must establish a high and low price election for each commodity for which insurance is available. The high price may not be less than the projected market price of the commodity. Level I coverage may be offered only at the low price election. Levels II, III, and IV must be offered at the high price election.

New sections 508B(e) and 508B(f) require certain other administrative procedures regarding such insurance.

Section 1405(b) amends section 508(e) of the FCIAct by adding a new paragraph (3) to require the Corporation to pay the premium for each producer for the basic first level of coverage for losses in excess of 65 percent.

Section 1405(c) amends section 508 of the FCIAct by adding a new subsection (h) that directs the Corporation to provide reinsurance of private and governmental insurers.

Section 1405(d) provides that the amendments made by section 1405 apply beginning with crops to be harvested in 1995.

****436*59** In order to explore various alternatives to providing risk protection for agricultural producers, the Committee encourages the Corporation to carry out, beginning in 1994, a three-year pilot program to make available to producers in six States (including Minnesota, North Dakota, and Mississippi) revenue insurance under which producers shall be indemnified for 85 per centum of their average cost of production. At the conclusion of the pilot program, the Corporation is expected to evaluate the program and report to Congress thereon.

COMMITTEE CONSIDERATION

On May 13, 1993, the Committee met to consider the recommendations of the Ad Hoc Task Force on Reconciliation (Task Force) concerning funding level recommendations and budget initiatives for fiscal year 1994 (Task Force recommendations) and required reductions in outlays for fiscal years 1994 through 1998 for programs within the Committee's jurisdiction. Acting Chairman Rose explained the recommendations of the Task Force.

Mr. Roberts was recognized and offered an amendment to strike the Food Stamp and commodity programs provisions and to reduce the authorization for Food Stamp direct spending by $2.95 billion from the level recommended by the Task Force. By a roll call vote of 17 yeas to 27 nays, the amendment was not adopted.

Mr. Emerson was recognized and offered an amendment to strike the Food Stamp provisions contained in the Task Force recommendations and substitute report language stating that the Committee is deferring action to recommend amendments to the Food Stamp Act of 1977 until the President transmits to the Speaker a draft of proposed legislation to reform welfare. By a roll call vote of 19 yeas to 25 nays, the Emerson amendment was not adopted.

Mr. Barrett was recognized and offered an amendment to exempt triple base acreage for certain conservation requirements. By a voice vote the Barrett amendment was not adopted.

Mr. Minge was recognized and moved that the proposal contained in the Barrett amendment be referred to the Subcommittee on Environment, Credit, and Rural Development for consideration. Acting Chairman Rose and Mr. English, Chairman of the

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Subcommittee, advised Mr. Barrett that H.R. 1587, legislation to enact the same proposal was already before the Subcommittee and that the Subcommittee would hold hearings and consider the suggestion at a later time. Mr. Barrett submitted materials in support of his proposal for the record.

Mr. English was recognized and distributed a proposal on crop insurance. He advised that there appeared to be approximately $200 million in excess cuts. He stated that with the cutbacks this might be the last opportunity to amend the Crop Insurance Program. Acting Chairman Rose proposed that the Committee accept the proposal with the understanding that the Committee would meet before conference to determine whether or not to retain the provision. By a show of hands vote of 18 yeas and 14 nays, the procedure as suggested by Acting Chairman Rose was approved. Whereupon, by a voice vote the English proposal was adopted.

****437*60** Mr. Penny advised that he had prepared an amendment containing proposed changes to the Market Promotion Program to improve the effectiveness and accountability of the program. He advised that he would prepare the proposal as a separate bill and address the changes in a separate bill at a later date.

Mr. Volkmer moved to delete the three-entity rule and apply any savings to the reduction of flex acres. Discussion occurred and by a show of hands vote of 8 yeas and 15 nays the Volkmer proposal was not adopted.

Mr. Boehner raised a point of order against the provisions contained in the Task Force recommendation relating to peanuts. The Acting Chair over-ruled on the grounds that no enforceable point of order had been raised. Mr. Boehner offered an amendment relating to assessments on manufacturers who utilize peanuts in the processing or manufacturing of their products. Mr. Rose clarified the intent of the Task Force proposal on peanuts and stated that he would agree to the Boehner amendment. By a voice vote the Boehner amendment was adopted.

Mr. Boehner moved to strike the provision in the Task Force recommendation providing for a temporary duty on peanut butter and peanut paste. By a show of hands vote of 8 yeas and 14 nays the Boehner suggestion was not adopted.

Mr. Boehner moved to strike the provision in the Task Force recommendation providing for the application of the import quotas on peanuts to peanut butter. By a show of hands vote of 7 yeas and 13 nays the Boehner suggestion was not adopted.

Ms. Long advised the Committee that she had planned to offer an amendment on quality control in the food stamp program, and had discussed her concerns with Subcommittee on Department Operations and Nutrition Chairman Stenholm. She advised the Committee that the Subcommittee would work with her concerning her suggestions during consideration of the entire question of food stamps at a future date.

Mr. Volkmer discussed the possibility of an amendment to require mandatory acreage reduction instead of increasing triple-base acres.

Mr. Johnson offered a proposal to extend the current oilseeds program through the 1998 marketing year, except that in the case of soybeans, the loan origination fee would not apply and the loan rate would be changed to $4.92 per bushel. By a roll call vote of 25 yeas and 12 nays the Johnson proposal was adopted with the understanding that the proposal would be deleted if the CBO estimate indicated there were insufficient savings to pay for the proposal after the crop insurance provisions were included in the reconciliation recommendations.

Acting Chairman Rose called for a final vote on the package of recommendations on reconciliation. By a roll call vote of 26 yeas and 18 nays, the Committee approved the Task Force funding level recommendations and budget initiatives for fiscal year 1994 for programs within the Committee's jurisdiction, as amended. By unanimous consent, staff was instructed to make any necessary clerical and technical changes to the Task Force recommendations, as amended, to reflect the Committee's intent.

****438*61** ADMINISTRATION POSITION

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 1994.

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BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 are printed below.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 1994 will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal year 1994.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 1993.

Hon. E de la Garza,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for reconciliation recommendations of the House Committee on Agriculture.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

****439*62** 2. Bill title: Agricultural Reconciliation Act of 1993.

3. Bill status: As ordered reported by the House Committee on Agriculture on May 14, 1993.

4. Bill purpose: These provisions would make changes in programs covering agricultural price supports, conservation activities, rural electrification, crop insurance, food stamps, and Forest Service activities for the purposes of meeting reconciliation targets.

5. Estimated cost to the Federal Government:

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TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
More detailed tables showing the budgetary impact of various provisions are attached to this estimate.

The budgetary impact of this bill falls within budget functions 270, 300, 350, 450, and 600.

Basis of estimate

Commodity Programs

Increase in unpaid flexible acres: Sections 1101–1104 would increase unpaid, flexible acres from the current level of 15 percent of a farmers' base acreage to 20 percent for crop years 1994 through 1998. Thus, farmers participating in the commodity programs for wheat, feed grains, cotton, and rice would take a cut in the percent of acres on which they were entitled to receive program payments. In addition, the percent of a farm's base acres that could be "flexed into", or planted to crops other than the program crop, also would increase. Thus, plantings on those "flex" acres would shift among program crops and to nonprogram crops based on expected market returns. As plantings of nonprogram crops increase, future outlays would decline. Outlays also would fall because participation in the commodity programs would decrease as a result of the increase in unpaid acres. CBO assumes that the program participation and acreage changes would be anticipated by the Secretary of Agriculture, who would offset those changes by adjusting the mandated ARPs (the percentage of acreage that must be idled ****440*63** to receive program benefits). Five-year savings are estimated to total $1,960 million.

Change in dairy purchase prices: Section 1105 would mandate a realignment in the prices paid by the Commodity Credit Corporation (CCC) for butter and non-fat dry milk. The price paid for butter would drop, while the price for nonfat dry milk would increase. CBO estimates that changes in the dairy program would reduce projected outlays by roughly $320 million through fiscal year 1998. These estimated savings would be partially offset, however, by a $61 million decline in assessment receipts associated with reducing the unit fee from $11.25 to $10 per hundredweight beginning in fiscal year 1996.

Increase in tobacco assessments: Sections 1106–1107 would increase the marketing assessments for tobacco and sugar by 10 percent above the current 1 percent level. This is estimated to raise $22 million over five years.

Increase in peanut assessments: Section 1109 would increase the assessment on marketed peanuts by an additional 2 percent. This is estimated to save $112 million from 1994 through 1998.

Decrease in honey loan rate: Section 1110 would decrease the honey loan rate from the current $.538 to $.50 per pound. Such loans are repaid at a rate determined by market prices. Under current law, the loan rate is expected to remain above the repayment rate through 1998, resulting in net outlays for the program. In contrast, the new loan rate of $.50 per pound is likely to be closer to (and in some years, equal to) the estimated loan repayment rate through 1998, resulting in lower net outlays. A small amount of additional savings is generated by capping such payments–or marketing loan benefits–at levels decreasing to $50,000 by 1997. CBO estimates that total savings from this proposal would be $23 million for the 1994–1998 period.

Reduce wool and mohair payments: Section 1111 would progressively reduce the payment limit for the wool and mohair program from $125,000 to $50,000 and would mandate a change in the formula for calculating individual payments. Savings from these changes are partially offset by additional outlays associated with changes in the promotion program and the elimination of marketing assessments. In total, these changes are estimated to reduce projected outlays by $47 million over five years.

Food Stamps

Subtitle C contains several provisions expanding the Food Stamp program and one provision expanding the Nutrition Assistance Program (NAP) for Puerto Rico. Outlays for these two programs are estimated to increase by $562 million in 1994 and by $7.1 billion over the 1994–1998 period. Costs are estimated as changes relative to CBO's March 1993 baseline, which assumes combined food stamp and NAP outlays of $24.3 billion in 1994 and $123.7 billion over the five-year

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projection period. Subtitle C also would provide an estimated $5 million increase in amounts subject to appropriations. A section-by-section table of costs is attached.

Section 1311 would raise the maximum benefit for all food stamp households on October 1, 1993, increasing average monthly benefits by approximately $.90 per person in fiscal year 1994. Food stamp ****441*64** outlays are estimated to increase by close to $0.3 billion annually and by $1.4 billion over five years as a result of this change. Section 1313 would adjust the shelter deduction over the next two years, increasing food stamp benefits to households with high shelter costs by less than $0.1 billion in 1994 and by $0.6 billion annually in subsequent years, for an estimated $2.4 billion five-year cost. Sections 1322 and 1323 would exclude certain child support payments from countable income under the Food Stamp program, beginning July 1, 1994. One section would increase benefits for households that pay child support and the other section would assist households that receive child support payments. Together, the two provisions would increase outlays by $1.7 billion over the projection period. Section 1325 would increase the vehicle asset limit from $4,500 to $5,500 on October 1, 1993, with the index increased for inflation in future years, making it easier for households owning cars and other vehicles to qualify for food stamps. CBO estimates that additional families joining the program under this provision would receive $1.0 billion in food stamps over the next five years. Additional provisions in Subtitle C would expand food stamp benefits by another $0.7 billion, increase the Nutrition Assistance Program in Puerto Rico by $0.1 billion, and reduce the federal share of food stamp administration costs by $0.1 billion.

Miscellaneous Provisions

Reduction in marketing promotion programs: Section 1401 would reduce the mandated level of spending for the Marketing Promotion Program from $200 million per year to $148 million. This program supports private initiatives to increase exports of U.S. agricultural products by advertising and other activities. Savings are estimated to be $235 million over the 1994–1998 period.

Recreation fees: Section 1402 would authorize the Secretary of Agriculture to collect entrance and user fees at recreation sites administered by the National Forest Service (NFS). The legislation would loosen minimum standards that must be met in order for the agency to charge fees at such facilities as campsites, beaches, and boat launch ramps.

Based on information provided by the NFS, CBO estimates that annual collections would be between $11 million and $13 million once the new fees have been fully implemented. Because it would take several months to establish and implement the new fee schedule, first-year receipts would be lower–about $7 million. Partially offsetting the new receipts in each year would be additional payments to states under receipt-sharing programs. The additional payments would be about $1 million in 1994, rising to about $3 million a year by 1996.

Limit on Conservation and Wetlands Reserve Programs: Section 1404 would cap enrollments into the Conservation Reserve Program (CRP) at 38 million acres through calendar year 1995. Under current law, 39 million acres are scheduled to be entered into the CRP by 1995. In addition, this section would limit enrollments into the Wetlands Reserve Program (WRP) to 330,000 acres through 1995 and 975,000 acres through the year 2000. Under current law, the WRP is capped at 1 million acres through 1995.

****442*65** The effect of section 1404 would be to limit total enrollments into the CRP to 1 million acres fewer than would occur under current law. This change would save about $5 million in 1994 and about $232 million over the 1994–1998 period. These savings would be partially offset by resulting increases in the cost of CCC programs totaling $3 million in 1994 and $29 million over the five-year period.

The major impact of Section 1404 on the WRP comes from extending the program for an additional five years. While only slightly fewer acres would be entered under the proposal than under current law, the extension for signups would lower the number of acres entered into the program over the next five years. This change would result in savings totaling $16 million in 1994 and $266 million over the 1994–1998 period.

In total, Section 1404 would save $18 million in 1994 and $469 million over five years.

Changes in crop insurance program: Section 1405 would modify the crop insurance program to provide farmers a 100 percent

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premium subsidy on disaster level coverage–that is, for losses exceeding 65 percent of normal yields–from private companies. Additional coverage levels may be provided to farmers by private companies but no additional premium subsidy would be provided. The farmer would pay $25.50 per policy for processing costs and the government would pay $24.50 to the private insurers for processing costs. Additional reimbursements for administrative costs would be provided by the government to the private companies, but such payments would be less than under current law. Excess loss protection would be provided by the government to the private companies for the additional coverage taken by farmers. CBO estimates that additional direct spending costs would be $204 million from 1994 through 1998.

Changes Subject to Appropriation Action

REA Insured Loans: Provisions of subtitle B would restructure the REA insured loan program. Currently, most insured loans have a statutory interest rate of 5 percent; in addition, certain borrowers may qualify for a 2 percent interest rate. The restructured program authorized by subtitle B would eliminate 2 percent loans and reduce the amount of loans with a 5 percent interest rate. The restructured loan program also would provide for additional loans to electric utilities at interest rates equal to the rates paid by municipal utilities, and additional loans to telephone utilities at interest rates equal to the cost of borrowing by the U.S. Treasury for debt of comparable maturity.

Subtitle B specifies annual levels for 5-percent loans, municipal-rate loans, and cost-of-money loans, and authorizes such sums as necessary to pay for the subsidy cost of these loans. CBO estimates that, for the loan levels specified, the bill would authorize a subsidy of $116 million in fiscal year 1994 and a total of $596 million over the 1994–1998 period. Assuming that the full amounts authorized are appropriated, we estimate that the restructured loan program would have subsidy outlays of $17 million in 1994 and $352 million over the 1994–1998 period.

****443*66** Relative to the CBO baseline, the restructured loan program would reduce the need for subsidy appropriations by $50 million in fiscal year 1994 and by $276 million over the next five years. Enacting the estimated changes in annual appropriations for REA insured loans would reduce outlays, relative to the baseline, by $8 million in 1994 and by $161 million over the 1994–1998 period.

Other Program Changes: The bill would reduce the need for future appropriations through changes in the crop insurance program (outlay savings of $406 million over five years) and by mandating consolidation of Department of Agriculture offices (savings of about $500 million over five years). It also would authorize changes to loan programs of the Rural Telephone Bank and reorganize the government's rural development functions.

6. Estimated cost to State and local governments: The net effect of Subtitle C on state and local governments is to increase costs by $93 million during the five-year projection period. Under section 1361, state and local governments are estimated to lose $116 million as the federal share of funding or certain administrative activities in the Food Stamp program is gradually lowered to 50 percent. These costs are partially offset by an estimated $21 million reduction in sanctions under modifications to the food stamp quality control system in section 1346 and an estimated $2 million savings in the state share of food stamp claims collected through federal pay offsets authorized under section 1342. Finally, the state option to increase reimbursable expenses under the Food Stamp Employment and Training program is estimated to increase costs in some states, because states pay 50 percent of such reimbursement costs; but it would reduce costs in other states, because some states are currently using state funds to reimburse expenses above the current $25 per month limit.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Eileen Manfredi, Ian McCormick, David Hull, Theresa Gullo, Deborah Reis, Peter Fontaine, Patricia Conroy and Julie Isaacs.

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

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****447*71** TITLE II–COMMITTEE ON ARMED SERVICES

House of Representatives,
Committee on Armed Services,
Washington, DC, May 14, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Committee on Armed Services convened on May 12, 1993 to recommend changes in direct spending and in authorization spending that would comply with the reconciliation instructions contained in H. Con. Res. 64. The recommendations adopted by the committee are provided in the enclosed package, which contains legislative language, report language and a Congressional Budget Office cost estimate.

I believe the enclosed recommendations will meet or exceed the fiscal year 1994 Budget Resolution targets for our committee. The enclosed report language underscores the deep concerns of Members of our committee about the effects of a 1994 pay freeze on the men and women who serve our nation in the far flung and dangerous reaches of the globe. Our committee hopes to provide additional ****448** compensation in the form of pay and benefit changes to military personnel if funding is available in the 1994 Department of Defense Authorization bill.

I have also enclosed for your consideration language that would make a technical change in the committee language to correct an unintended effect of action taken by the Committee on Post Office and Civil Service. The action by the Post Office and Civil Service Committee would result in a six-month delay in the pay raise for military personnel for four years. This clearly was not the intent of the Committee on Armed Services. The markup of the Post Office and Civil Service Committee occurred after our markup and too late for our committee to correct this obvious technical error in time to meet the deadline established by your committee.

The attached technical language would ensure that the military pay raise would continue to be effective on January 1 in the fiscal years 1995–1998, as is the clear intent of the committee. I therefore ask the Committee on the Budget to respect the intent of the Members of our committee by including this technical language change in the reconciliation bill. Furthermore, I am including the estimate of the Congressional Budget Office for the language that matches the committee's intent.

I greatly appreciate your assistance and cooperation, and that of your staff, during this process, and I look forward to continuing our ***72** dialogue as these issues arise during Floor debate and conference with the Senate.

Sincerely,

Ronald V. Dellums,
Chairman.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON ARMED SERVICES

The reconciliation instructions contained in H. Con. Res. 64 directed the Committee on Armed Services to reduce two types of outlay spending–direct spending and authorization spending. Specifically, the resolution included: (1) reductions in direct spending of approximately $128 million in 1994 and $2.4 billion over the 1994–1998 period; and (2) reductions in authorization spending of $2,012 billion in 1994 and $20,263 billion over the 1994–1998 period.

In directing these savings, the Committee on the Budget made policy decisions that have an impact on legislation under the jurisdiction of the Committee on Armed Services–military retiree cost-of-living adjustments and military pay raises. While most of us applaud the Committee on the Budget's deficit reduction efforts, the committee was not bound by the policy options delineated in the Statement of Managers accompanying the Concurrent Resolution on the Budget for Fiscal Year 1994 to achieve the savings.

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****449** SECTION-BY-SECTION EXPLANATION

Section 2001 describes the action the committee recommends with respect to the cost-of-living adjustment (COLA) for military retirees. In achieving the savings associated with direct spending, the Committee on the Budget assumed a permanent change in law whereby military retirees, excluding survivors and disabled retirees under the age of 62, would receive half COLA until age 62. In fiscal year 1994, the Budget Committee further assumed a $400 COLA cap or half COLA, whichever is lower.

The committee disagreed with this age distinction targeted at military retirees and felt a more equitable alternative to the Committee on the Budget's recommendation would be a delay in the COLA adjustment applicable to all retirees. Under the committee recommendation, all military retirees would receive their full COLA on a delayed schedule. Specifically, payment of the COLA would be delayed by four months the first year, and by three months for the next four fiscal years:

Delay the fiscal year 1994 COLA four months, from January 1, 1994, until May 1, 1994;

Delay the fiscal year 1995 COLA for an additional three months, from May 1, 1995 until August 1, 1995;

Delay the fiscal year 1996 COLA for an additional three months, from August 1, 1996 until November 1, 1996;

Delay the fiscal year 1997 COLA for an additional three months from November 1, 1997 until February 1, 1998;

Delay the fiscal year 1998 COLA for an additional three months from February 1, 1999 to May 1, 1999.

***73** Under the committee recommendation, survivors and disabled retirees would continue to receive full COLAs on January 1 of each year.

Section 2002 describes the committee recommendation on the military pay freeze. The Committee on the Budget adopted the President's proposal to freeze Federal pay in fiscal year 1994 and to reduce the pay raise by one percent below that currently authorized by law for the succeeding four years and included the savings associated with the freeze in the reconciliation instructions.

Although the committee reluctantly adopted these pay changes, it did so under two assumptions. First, the committee assumed that there would be no further end strength reductions in fiscal year 1994 beyond the cut of 108,000 personnel contained in the President's budget proposal. Adopting a pay raise authorized by current law and funded by the military personnel account would have required an additional cut of more than 80,000 personnel in fiscal year 1994. Secondly, the committee assumed that if funding is available in the fiscal year 1994 Department of Defense Authorization bill, the committee could provide additional compensation in the form of pay and benefit changes for military personnel most affected by the one-year pay freeze. The committee remains committed to the goal of ensuring that military pay maintains comparability with private sector wage growth.

****450** The committee has also forwarded language that would make a technical change in the committee language to correct an unintended effect of action taken by the Committee on Post Office and Civil Service. The action by the Post Office and Civil Service Committee would result in a six-month delay in the pay raise for military personnel for four years. This clearly was not the intent of the Committee on Armed Services. The markup of the Post Office and Civil Service Committee occurred after our markup and too late for our committee to correct this obvious technical error in time to meet the deadline established by the Committee on the Budget.

The technical correction would ensure that the military pay raise would continue to be effective on January 1 in the fiscal years 1995–1998, as is the clear intent of the committee. The Chairman therefore requested the Committee on the Budget to respect the intent of the Members of our committee by including this technical language change in the reconciliation bill. To this end, the estimate of the Congressional Budget Office for the language that matches the committee's intent is also included.

RECONCILIATION LANGUAGE FOR COMMITTEE ON ARMED SERVICES (WITH TECHNICAL CORRECTION)

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TITLE II–COMMITTEE ON ARMED SERVICES

SEC. 2001. LIMITATION ON COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES.

Paragraph (2) of section 1401a(b) of title 10, United States Code, is amended to read as follows:

"(2) Pre-August 1, 1986 members.–

"(A) General rule.–The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, ***74** 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which–

"(i) the price index for the base quarter of that year, exceeds
"(ii) the base index.
"(B) Special rule for fiscal years 1994 through 1998.–In the case of the increases in retired pay that, pursuant to paragraph (1), become effective on December 1 of each of fiscal years 1994, 1995, 1996, 1997, and 1998, the initial month for which each such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be as set forth in the following table:

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****451** "(C) Exclusion of disability retirees from rolling cola.–Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.".

SEC. 2002. ELIMINATION OF MILITARY PAY RAISE FOR FISCAL YEAR 1994 AND REDUCTION IN THE AMOUNT OF THE RAISE FOR FISCAL YEARS 1995 THROUGH 1998.

(a) Fiscal Year 1994.–During fiscal 1994, no increase in the rates of basic pay, basic allowance for quarters, or basic allowance for subsistence of members of the uniformed services shall be made or take effect pursuant to section 1009 of title 37, United States Code.

(b) Additional One Percent Reduction in Subsequent Fiscal Years.–If the General Schedule of compensation for Federal classified employees is increased under section 5303 of title 5, United States Code, as amended by title X of this Act, during fiscal year 1995, 1996, 1997, or 1998, the elements of compensation of members of the uniformed services shall likewise be increased during that fiscal year in the manner provided in section 1009 of title 37, United States Code, based on the corresponding increase under section 5303 of title 5, United States Code (as so amended).

(c) Effective Date of Raises.–Notwithstanding subsections (a) and (b)(1) of section 1009 of title 37, United States Code, during the 10-year period beginning on January 1, 1994, any increase in the elements of compensation of members of the uniformed services that is required to be made under such section during a fiscal year shall take effect on January 1 of that year rather than on the date the corresponding increase under section 5303 of title 5, United States Code, as amended by title X of this Act, takes effect.

***75** U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. Ronald V. Dellums,
Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimates for the alternative sets of provisions reducing spending in programs within the jurisdiction of the House Committee on Armed Services.

The estimates included in the attached report represent the 1994–1998 effects on the federal budget and on the budget resolution baseline of the Committee's legislative proposals. CBO understands that the staff of the Committee on the Budget

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will be responsible for interpreting how the savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

Enclosure.

****452** CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill title: Title II, Reconciliation Language for Committee on Armed Services.

2. Bill status: The first of two versions as provided by the staff of the House Armed Services Committee on May 12, 1993.

3. Bill purpose: To reduce expenditures authorized by the House Committee on Armed Services in response to budgetary requirements established for that Committee by the Concurrent Resolution on the Budget for fiscal year 1994.

4. Estimated cost to the Federal Government:

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Basis of estimate

Direct Spending: Currently, military retirement pay is adjusted to reflect increases in the Consumer Price Index (CPI) with cost-of-living adjustments (COLA) that are made annually, beginning with the benefit check paid in January. CBO's baseline assumes a 3 percent COLA in 1994, and 2.7 percent COLAs in 1995 through 1998. Section 2001 would delay COLA payments in 1994 through 1998. In 1994, the COLA payment would be delayed four months from January to May. After 1994, COLAs would be paid every 15 months rather than every 12 months.

***76** The estimated savings are based on CBO baseline assumptions regarding future changes in the CPI and future outlays for military and coast guard retirement pay. COLAs for disabled retirees and survivor benefits are not affected by this provision.

Authorization of Appropriations: The CBO baseline assumes military pay costs rise with the projected increases in the Employment Cost Index (ECI). Section 2002 would deny a military pay raise for 1994 and would tie future pay raises to the increase in the level of General Schedule employee compensation as provided in Title X of this year's Reconciliation Act. Based on reconciliation language issued by the House Post Office and Civil Service Committee on May 13, CBO assumes that the General Schedule raises would be indexed to previous increases in the ECI, less 1.5 percentage points for 1995 through 1997 and less one-half percentage point in 1998. The effective date for these raises would be July 1 in each year. This would result in lower pay costs than those in the baseline. The pay freeze in 1994 would save $2,117 million in budget authority relative to the CBO baseline, and the total savings over five years resulting from the freeze and the lower pay raises in 1995 through 1998 would amount to $23,154 million.

5. Estimated cost to State and local governments: None.

6. Estimate comparison: This estimate assumes that military pay raises for 1995 through 1998 are effective on July 1 of each year. ****453** CBO has also prepared an estimate of another version of this bill which specifies an effective date of January 1 for those raises.

7. Previous CBO estimate: None.

8. Estimate prepared by: Mary Helen Petrus and Amy Plapp.

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9. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill title: Title II, Reconciliation Language for Committee on Armed Services.

2. Bill status: The second of two versions as provided by the staff of the House Armed Services Committee on May 13, 1993.

3. Bill purpose: To reduce expenditures authorized by the House Committee on Armed Services in response to budgetary requirements established for that Committee by the Concurrent Resolution on the Budget for fiscal year 1994.

4. Estimated cost to the Federal Government:

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Basis of estimate

Direct Spending: Currently, military retirement pay is adjusted to reflect increases in the Consumer Price Index (CPI) with cost-of-living adjustments (COLA) that are made annually, beginning ***77** with the benefit check paid in January. CBO's baseline assumes a 3 percent COLA in 1994, and 2.7 percent COLAs in 1995 through 1998. Section 2001 would delay COLA payments in 1994 through 1998. In 1994, the COLA payment would be delayed four months from January to May. After 1994, COLAs would be paid every 15 months rather than every 12 months.

The estimated savings are based on CBO baseline assumptions regarding future changes in the CPI and future outlays for military and coast guard retirement pay. COLAs for disabled retirees and survivor benefits are not affected by this provision.

Authorization of Appropriations: The CBO baseline assumes military pay costs rise with the projected increases in the Employment Cost Index (ECI). Section 2002 would deny a military pay raise for 1994 and would tie future pay raises to the increase in the level of General Schedule employee compensation as provided in Title X of this year's Reconciliation Act. This section would also set the effective date of the raises as January 1 in each year. Based on reconciliation language issued by the House Post Office and Civil Service Committee on May 13, CBO assumes that the General Schedule raises would be indexed to previous increases in the ECL, less 1.5 percentage points for 1995 through 1997 and less one-half ****454** percentage point in 1998. This would result in lower pay costs than those in the baseline. The pay freeze in 1994 would save $2,117 million in budget authority relative to the CBO baseline, and the total savings over five years resulting from the freeze and the lower pay raises in 1995 through 1998 would amount to $20,604 million.

5. Estimated cost to State and local governments: None.

6. Estimate comparison: This estimate assumes that military pay raises for 1995 through 1998 are effective on January 1 of each year. CBO has also prepared an estimate of another version of this bill which links the timing of military pay raises to that of General Schedule employees as provided in reconciliation language issued by the House Post Office and Civil Service Committee. That estimate assumes pay raises occur on July 1.

7. Previous CBO estimate: None.

8. Estimate prepared by: Mary Helen Petrus and Amy Plapp.

9. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

****0** CHANGES IN EXISTING LAW MADE BY TITLE II OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by title II of the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter

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is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1401A OF TITLE 10, UNITED STATES CODE

S 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) * * *

(b) Cost-of-Living Adjustments Based on CPI Increases.–

***78** (1) In general.–Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

[(2) Pre-August 1, 1986 members.–The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which–

[(A) the price index for the base quarter of that year, exceeds

[(B) the base index.]

(2) Pre-August 1, 1986 members.–

(A) General rule.–The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which–

(i) the price index for the base quarter of that year, exceeds
(ii) the base index.
(B) Special rule for fiscal years 1994 through 1998.–In the case of the increases in retired pay that, pursuant to paragraph (a), become effective on December 1 of each of fiscal years 1994, 1995, 1996, 1997, and 1998, the initial month for which each such increase is payable as part of such retired pay shall (notwithstanding such December 1, effective date) be as set forth in the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
(C) Exclusion of disability retirees from rolling cola.–Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.

* * * * * * *

***79** ADDITIONAL VIEWS OF MRS. SCHROEDER

As members of the Committee grapple with tough choices on the budget, the defense drawdown, and the specific issues of a pay freeze and cost of living adjustments, at least one of those choices should be for some budget. It's too easy to just say no to all of the choices. Surely no one would advocate no budget at all.

Incredibly, that is precisely what 9 of our colleagues on the other side of the aisle did when the budget resolution was considered on the floor. This is the worst possible course and shows an abdication of leadership.

For those other 13 minority members who were brave enough to cast a vote for a budget, both the Kasich and Solomon substitutes for which they voted included the President's pay freeze proposal as well as no COLA for military retirees prior to age 62.

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I find it interesting to sit as the committee considers these difficult reconciliation recommendations and listen to the rhetoric against pay freezes and for COLAs by members who either voted for no budget at all or earlier agreed with the majority on these issues.

****455*80** DISSENTING VIEWS OF MESSRS. FLOYD D. SPENCE, BOB STUMP, DUNCAN HUNTER, HERBERT H. BATEMAN, JAMES V. HANSEN, CURT WELDON, JON KYL, ARTHUR RAVENEL, JR., ROBERT K. DORNAN, JOEL HEFLEY, RONALD K. MACHTLEY, JIM SAXTON, RANDY "DUKE" CUNNINGHAM, JAMES M. INHOFE, STEPHEN E. BUYER, AND PETER G. TORKILDSEN, MRS. TILLIE K. FOWLER, AND MESSRS. JOHN M. MCHUGH, JAMES M. TALENT, TERRY EVERETT, AND ROSCOE G. BARTLETT

We rejected the FY 94 Concurrent Budget Resolution's treatment of military personnel, their families, and military retirees, and consequently all twenty-two committee Republicans voted against reporting reconciliation recommendations back to the Budget Committee that will detrimentally impact the entire military community.

We have heard the voices of our political leaders calling for deficit reduction. We agree, the deficit must come down. We have also heard the voice of our President calling for military personnel and military retirees to share in the pain that will be necessary if we ever hope to reduce our national debt. We do not agree, however, that those who have sacrificed and continue to sacrifice for their nation ought to be treated the same as everyone else. Moreover, even if we agreed with the Concurrent Budget Resolution's "equal treatment" premise, the Administration's budget and Congressional Democrats' spending plan does not spread the pain of deficit reduction equitably.

We believe that the Administration and the Concurrent Budget Resolution demand far more of the military than its fair share. For example:

> Under the FY 94 Concurrent Budget Resolution, non-defense discretionary spending will grow by $30 billion over the next five years.
>
> From that same baseline, defense spending will decline by $186 billion. These cuts are in addition to the eight consecutive years of real decline in defense spending that have occurred since 1985.
>
> Even as defense resources continue to decline, defense commitments at home and around the world grow. As General Colin Powell recently told this committee, "There are many more entries on my dance card this year than *** last year."

Declining defense resources coupled with increasing defense commitments at home and abroad place untenable demands on military servicemembers and their families. For example:

> U.S. Marine Corps and Navy personnel now spend up to six months of every year away from home and family, either deployed, or preparing for deployments.
>
> ***81** There is no longer any semblance of job security in the U.S. military as DOD released 178,000 active-duty servicemembers last year alone.
>
> ****456** One Army unit has already been deployed for four consecutive Christmases–serving overseas away from home and families.

Numbers only begin to tell the story of the sacrifices being made by our military personnel and their families as a result of the defense drawdown. When a human face is put on the drawdown, the "real" price becomes apparent. For example:

> A Navy Master Chief recently completed a 42-month tour of sea duty, 32 months of it deployed away from home. That tour included two deployments to the Persian Gulf, one to the North Atlantic and numerous training exercises. His wife, who endured Desert Storm with a husband and a daughter deployed, often comforted herself with the thought that the family sacrifices were patriotic and would be rewarded.

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> Shortly after beginning shore duty, the family bought a house, put their daughter in college, and were beginning to get reacquainted as a family, when the master chief was selected for early retirement. The service member and his family were traumatized. They felt they didn't deserve to be forced into early retirement, or forced to leave the Navy. They described the impact as "a kick in the stomach."

The principal problem with the FY 94 Concurrent Budget Resolution and consequent reconciliation instructions to our committee is that the only options we have all end up disproportionately hurting military retirees and/or military personnel.

The Concurrent Budget Resolution instructed the Armed Services Committee to report legislation to reduce direct spending for programs within our jurisdiction by $2.3 billion over five years. The only significant sources of direct spending within our committee's jurisdiction are the Military Retirement Trust Fund and the Educational Benefits Trust Fund. For the committee to meet its reconciliation target for direct spending, the only options before us involved tampering with retiree cost of living allowances or educational assistance for veterans and reservists. We do not believe either is a viable option. The importance of preserving and employing these recruiting and retention incentives during the on-going defense builddown cannot be overstated.

The Concurrent Budget Resolution also instructed the Armed Services Committee to report legislation reducing authorization levels by $20.2 billion over five years. Having to meet both FY 94 and five-year outlay reduction targets also presented us with untenable options–either accept the proposed cut in military pay or cut additional personnel from the force in order to provide some level of pay increase to those who remain. We reject both options in light of the already significant on-going reductions in military manpower.

The idea that a military pay freeze is justified because all should share in the nation's deficit reduction effort also ignores recent trends in military pay. In the last 10 years, military pay has lagged 7.8% behind inflation, and 11.7% behind civilian pay. Support for the FY 94 Concurrent Budget Resolution is support for a program that will cause military pay to fall at least 21% behind the civilian ****457*82** sector. The military is a decidedly middle class institution that is already lagging behind the civilian sector and therefore should not be asked to bear the burden of deficit reduction. For example:

> Between 70% and 80% of all enlisted personnel in the military earn less than $30,000 per year–the income group the President has promised to hold harmless.
>
> 50% of the enlisted personnel in the Army, 46% in the Marine Corps, 26% in the Navy and 18% in the Air Force earn less than $20,000 per year. Of these personnel, 118,000 are minorities, 112,000 have families and 6,500 are single parent families.
>
> Approximately 20,000 enlisted men and their families are currently eligible for food stamps.

We know that large pay comparability gaps were a major reason why quality people quit the military services, or decided not to join at all, in the late 1970s. Pay was a primary factor underlying the ineffective, hollow military of the 1970s that had to be rebuilt in the 1980s. Today, we have no desire to repeat the mistakes of the past.

Proposing that military personnel, their families and retirees accept a sharp cut in pay, or a substantial reduction in retirement benefits–all under the ruse of asking all civil servants to share in the pain of deficit reduction–is an affront to those who serve, and those who have served. We have no choice but to reject it.

We cannot in good conscience support any effort that asks the men and women in uniform, and the community that supports them, to unreasonably and unequally share in addressing an economic burden that the Administration and the Congress do not take seriously. Unfortunately, that is exactly what the FY 94–98 budget reconciliation process has asked of the Armed Services Committee.

***83** TITLE III–COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

House of Representatives,
Committee on Banking, Finance and Urban Affairs,

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Washington, DC, May 14, 1993.

Hon. Martin Sabo,
Chairman, Committee on the Budget, House Office Building, Washington, DC.
Dear Mr. Chairman: On May 6, 1993, the Committee on Banking, Finance and Urban Affairs, with a quorum present, approved a reconciliation package pursuant to the requirements of the Budget Act.

The enclosed material is the legislative language and the report documents reflective of the adopted views of the Banking Committee. Under the rules, I understand that these materials will be incorporated into the report your Committee will file in the House.

On behalf of the Members of the Banking Committee, I sincerely want to thank you and your Committee for the assistance you have ****458** given to the Banking Committee in the preparation of the reconciliation package.

Sincerely,

Henry B. Gonzalez,
Chairman.
Committee on Ways and Means,
House of Representatives,
Washington, DC, May 5, 1993.

Hon. Henry B. Gonzalez,
Chairman, Committee on Banking, Finance and Urban Affairs, House of Representatives, Rayburn House Office Building, Washington, DC.
Dear Mr. Chairman: I understand that the reconciliation targets of the Committee on Banking, Finance and Urban Affairs assume approval of an Administration proposal to authorize and require the Department of Housing and Urban Development (HUD) to conduct computer matches of income data provided by families assisted (or expected to be assisted) under HUD housing programs using income data maintained by the Internal Revenue Service (IRS) on these same families. As formulated by the Clinton Administration, this proposal includes certain amendments to section 6103 of the Internal Revenue Code. Such amendments are necessary to authorize disclosure by the IRS of confidential taxpayer return information.

I also understand that you intend to include those portions of this provision which are within your Committee's jurisdiction in your reconciliation legislation. Therefore, it is my intention to lay ***84** before the Committee on Ways and means at its upcoming markup all of the tax related provisions proposed by the Clinton Administration, including the Internal Revenue Code amendments authorizing the IRS to share taxpayer return information with HUD for purposes of verifying income eligibility. I understand that the Budget Committee will credit any projected budget savings attributable to those IRS/HUD data sharing provisions exclusively to the Committee on Banking.

As you may know, it is the practice of the Ways and Means Committee to conduct its markup using a conceptual format. Accordingly, I have enclosed the relevant material from the Committee's markup document describing the tax portion of the Administration's proposal.

I look forward to working with you and your staff on this matter of mutual concern.

With warm regards, I am

Sincerely yours,

Dan Rostenkowski,
Chairman.

Enclosure.

****459** WAYS AND MEANS COMMITTEE MARKUP OF ADMINISTRATION'S REVENUE PROPOSALS

(Prepared by the staff of the Joint Committee on Taxation, May 4, 1993)

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* * * * * * *

2. Access to tax information by the Department of Housing and Urban Development

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, except for disclosure to certain Governmental entities in certain enumerated instances (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized disclosure of the information.

Administration's Proposal

The proposal would permit disclosure of certain tax return information to the Department of Housing and Urban Development (HUD) to assist HUD in verifying eligibility for certain HUD programs. Such tax return disclosure would be permitted only with respect to applicants for and participants in HUD programs who have executed consent forms under section 904(b)(3) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

***85** Under the proposal, HUD would be required to comply with the safeguards presently contained in the Code (governing the use of disclosed tax information).

Effective Date

The proposal would be effective on the date of enactment. *

SECTION-BY-SECTION ANALYSIS OF RECONCILIATION RECOMMENDATIONS FOR FISCAL YEAR 1994 BY THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SECTION 3001–NATIONAL DEPOSITOR PREFERENCE

This section amends the Federal Deposit Insurance Act to require receivers of failed insured depository institutions to give priority to depositors over general creditors when distributing assets of failed banks and thrifts. This section establishes a priority scheme that receivers must follow when distributing assets from ****460** failed institutions, including paying administrative expenses, depositors and employees, other than senior executive officers, prior to general creditors and shareholders.

This section preempts state laws to the extent that they provide for a priority scheme that is inconsistent with the federal scheme.

SECTION 3002–TRANSFER OF FEDERAL RESERVE SURPLUSES

This section prohibits the Federal Reserve from increasing the funds in its surplus account in excess of the amount equal to 3 percent of the total paid-in capital and surplus of the member banks in fiscal years 1994 through 1998. Additionally, it requires the Federal Reserve Board to transfer $106 million in fiscal year 1997 and $107 million in fiscal year 1998 from the surplus account to the Treasury. During these two fiscal years, the Federal reserve banks are prohibited from replenishing their surplus accounts to compensate for any of the $213 million that they must transfer to the Federal Reserve Board for transfer to the Treasury.

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SECTION 3003–USE OF RETURN DATA FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS

Amends section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, which prevents fraud and abuse in housing and urban development programs.

Amends section 904(b) to give the Secretary of HUD the authority to require applicants and participants of HUD programs involving initial and periodic review of income, including the Indian Housing program under Title II of the United States Housing Act of 1937, to sign a consent form authorizing the Secretary to request the Commissioner of Social Security and the Secretary of the Treasury to release return information concerning the applicants and participants pursuant to the Internal Revenue Code. The sole purpose for the release of information is to verify income information pertinent to the applicant's or participant's eligibility or level of benefits.

***86** Amends section 904(c)(2)(A) to protect applicants for, and recipients of, benefits under HUD programs from improper use of information obtained pursuant to the Internal Revenue Code. Limits the use of such information to 1) verification of eligibility for or level of benefits; 2) to inform an owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain, and to request such owner or public housing agency to verify the applicant's or participant's income information.

Amends section 904(c)(2)(B) to require, before an applicant's or participant's benefits can be terminated, denied, suspended or reduced, independent verification of information received by a Federal, State or local agency, public housing agency or owner, 1) regarding the amount of an applicant's or participant's other earnings or income, in addition to wages and unemployment compensation benefits; 2) whether the applicant or participant had access to such other earnings or income; and 3) when they actually received it.

****461** Amends section 904(c)(2)(C) to require that an applicant or participant be given the opportunity to contest findings based on verified information made by the agency or owner at a hearing that provides the basic elements of due process.

Amends section 904(c)(3)(A) to make subject to penalty a knowing and willful obtaining of Internal Revenue Code information under false pretenses, or a knowing or willful disclosure of such information, by any officer or employee of HUD or any public housing agency, and any owner (or employee thereof) responsible for determining eligibility for or level of benefits. Amends section 904(c)(3)(B) to give an applicant or participant affected by a negligent or knowing disclosure of Internal Revenue Code information the right to bring a civil action for damages against any officer or employee of any public housing agency or owner (or employee thereof) responsible for the unauthorized action.

SECTION 3004–GNMA REMIC GUARANTEE FEES

Amends section 306(g)(3) of the National Housing Act to require that fees charged for the guaranty of, or commitment to guaranty, multiclass securities backed by a trust or pool of securities or notes guarantied by the Association shall be charged by the Association in an amount not to exceed the value, as determined by the Association, of the guarantee or commitment to guarantee. Requires the Association to take such action as may be necessary to reasonably assure that such portion of the value of the guaranties or commitments to guaranty as the Association determines is appropriate accrues to the benefit of future mortgagors under the mortgages by or upon which such securities or notes are backed.

Requires the Association to submit a report to Congress for each fiscal year, describing any activities of the Association with respect to guarantying and making commitments to guaranty multiclass securities. Requires the report to be submitted not later than 90 days after the end of the fiscal year for which the report is made and requires it to identify the extent of such activities during the fiscal year, the size of each transaction closed during the fiscal year involving such securities, the number of mortgages involved in each such transaction, and the amount of fees charged and earned by ***87** the Association for such transactions, including an estimate of the portion of the value that accrues to the mortgagor.

Requires the Association to provide for the initial implementation of the program by notice published in the Federal Register, which notice will be effective upon publication, with an opportunity for public comment. The Association is required to issue regulations for such program not later than 12 months after publication of the notice.

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SECTION 3005–MUTUAL MORTGAGE INSURANCE FUND PREMIUMS

Requires the Secretary of HUD to increase the rate at which the Secretary earns the Federal Housing Administration (FHA) insurance single premium payment collected at the time of insurance of a mortgage that is an obligation of the Mutual Mortgage Insurance Fund (MMI). In establishing the increased rate, the Secretary is required ****462** to consider any current audit findings and reserve analyses and information regarding the expected average duration of mortgages that are obligations of the MMI fund and may consider any other information that the Secretary determines to be appropriate.

EXPLANATION OF THE LEGISLATION

To comply with the instructions of the conference agreement on the budget resolution to reduce the deficit by $3.758 billion for fiscal years 1994 through 1998, the Committee has approved a number of measures to reduce direct spending and authorizations and increase revenues. The Committee has passed provisions to require:

(1) the Resolution Trust Corporation ("RTC") and the Federal Deposit Insurance Corporation ("FDIC") to give priority to depositors in distributing assets of failed insured depository institutions,

(2) the Federal Reserve Board to transfer money to the Treasury from its surplus funds account,

(3) the Government National Mortgage Association ("GNMA") to charge fees for the guaranty or commitment of multiclass securities backed by mortgages, known as Real Estate Mortgage Investment Conduits ("REMICs"),

(4) the Department of Housing and Urban Development ("HUD") to verify the income of applicants to, or participants in, assisted housing programs, to determine their eligibility for benefits and the appropriate level of benefits, and

(5) HUD to accelerate the rate at which the one-time up-front mortgage insurance premium is recognized on an FHA-insured loan.

Depositor preference

This provision amends the Federal Deposit Insurance Act to give depositors a preference over general creditors and shareholders when a receiver distributes assets from failed banks and thrifts. Currently, the FDIC pays depositors on a pro rata basis with general creditors when distributing the assets of a failed national bank or a state bank in a state that does not have a depositor preference law. Depositor preference will increase the amount of the distribution ***88** to depositors of failed institutions. Because the FDIC is subrogated to the claims of insured depositors, it will increase its recovery and therefore realize a savings under a depositor preference scheme.

About 30 states have depositor preference laws. Under this provision, these state laws will be preempted if, and to the extent, they are inconsistent with this law. The Committee expects the FDIC to promulgate regulations to implement this provision.

Federal Reserve surplus funds

This provision requires the Federal Reserve Board to transfer $106 million in fiscal year 1997 and $107 million in fiscal year 1998 from the Federal Reserve's surplus fund to the Treasury. At ****463** the end of 1992, the Federal Reserve had in excess of $3 billion in its surplus fund. The Federal Reserve's practice has been to match the funds in the surplus account with those in the paid-in capital account. Under this provision, in fiscal years 1994 through 1998, the Federal Reserve is prohibited from increasing the surplus account to equal the paid in capital account beyond 3% of member banks' paid up capital stock and surplus.

The Committee intends that the $213 million to be transferred to the Treasury in fiscal years 1997 and 1998 will be funds from the surplus account that would not otherwise have been transferred to the Treasury by the Federal Reserve Board.

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Furthermore, the Committee intends that the Federal Reserve will not artificially inflate its operating expenses, or take any other actions that would result in the transfer of less money to the Treasury than would otherwise be the case. Additionally, once the funds are transferred to the Treasury from the surplus account, the Federal Reserve is prohibited from replenishing those funds during fiscal years 1997 and 1998.

SECTION 3003–USE OF RETURN DATA FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS

The Committee on Banking, Finance and Urban Affairs is required under the Fiscal Year 1994 Concurrent Budget Resolution to provide budget savings of approximately $1.6 billion through the income verification of HUD program applicants or participants. This requirement was initially presented to Congress in the February 1993 Congressional Budget Office's publication entitled, Reducing the Deficit: Spending and Revenue Options.

The Committee report complies with this budget savings requirement by amending section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, which prevents fraud and abuse in housing and community development programs, to authorize the Secretary of Housing and Urban Development to utilize income return data, pursuant to the Internal Revenue Code, to verify or crossmatch the income of applicants and participants of HUD programs.

The Committee notes that in order to achieve budgetary savings, corresponding changes must be made to the Internal Revenue Code. These amendments have been made separately in the provisions reported out by the House Ways and Means Committee for budget reconciliation. The Committee received a letter dated May ***89** 5, 1993, in which the House Ways and Means Committee stated that it would mark-up the changes required to be made to conform the Internal Revenue Code to the changes regarding use of return information made by section 3003. The letter also stated that the House Budget Committee will credit any projected savings attributable to this provision exclusively to the House Banking Committee. A copy of the letter is attached.

The Committee is concerned that the budget process, once again, has mandated housing policy, and that this income matching requirement, in particular, raises concerns regarding administrative ****464** burdens for housing providers and privacy concerns with regard to households receiving housing assistance.

Under current law, HUD has the authority to require applicants and participants of HUD programs involving a review of income, to sign a consent form authorizing HUD, public housing agencies, or owners, to request salary and wage information from an applicant's or participant's current or previous employers, and to match this income information with wage and claim information provided by the State agency that administers the State's unemployment compensation law.

Current law specifically provides that the consent form cannot be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code. The Committee bill however would change this prohibition by giving HUD the authority to require applicants and participants to sign a consent form which would authorize HUD to request wage and other information from returns submitted to the Commissioner of Social Security and the Secretary of the Treasury.

The Committee bill would apply these income matching requirements to applicants and participants of most federally assisted subsidized housing and community development programs administered by HUD, which are under the Committee's jurisdiction. The Committee bill would also apply this income matching requirement, as well as the current income verification requirements under Section 904 in existing law, to Indian housing programs under Title II of the United States Housing Act of 1937. The Committee has made this amendment to Indian Housing programs for purposes of consistency among all programs administered by HUD; however, the Committee remains concerned that this change not unduly create additional burdens for the administering entities within Indian areas or infringe on the rights of Indian tenants.

The Committee bill clearly intends that the sole purpose for releasing this income data to HUD is to verify a program applicant's or participant's income in order to cross match the data originally given to HUD by these persons. In addition, the Committee wishes to emphasize that this provision authorizes release of return information only to HUD, and not to public housing agencies or owners. This is in contrast to current law that authorizes public housing agencies and owners to obtain non-return salary and wage information. Under the Committee amendments, HUD, and not public housing authorities and owners, will have the sole authority and responsibility for obtaining return information.

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The Committee is concerned about the release of data generally, and is specifically concerned about the potential impact on the privacy ***90** rights of tenants by this provision. Poor people who are economically dependent on the federal government should not have to forfeit their civil liberties as the price of subsidized housing assistance. The Committee expects HUD to closely monitor the implementation of this provision to ensure that privacy rights are not compromised, and will direct HUD to inform the Committee of any information that it may receive regarding unwarranted disclosure or abuse of the information obtained. The Committee reemphasizes that no tenant or applicant who discloses all financial information ****465** relating to an application or recertification can be required to sign a HUD release form until such form has been revised in consultation with interested parties, in accordance with Section 903 of the Housing and Community Development Act of 1992, Public Law 102–550.

The Committee bill also includes income return information within the protection provided in existing law. Current law protects against improper use of information obtained from the State unemployment compensation agency, by limiting that information to verification of an applicant's or recipient's eligibility for or level of benefits, or to inform an owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain, and to request the owner or public housing agency to verify the income information.

Current law prohibits Federal, State or local agencies, public housing agencies, or owners, from terminating, denying, suspending, or reducing an applicant's or participant's benefits, prior to independently verifying information relating to the amount of an applicant's or participant's wages or unemployment compensation, whether they had access to those wages or benefits, and when they were actually received. The Committee bill also changes existing law to require information on an applicant's or participant's "other earnings and income" to be independently verified.

Under current law, applicants and participants are to be informed of findings made by the agency or owner on the basis of the verified information, and to be given an opportunity to contest such findings in the same manner as applies to other information and findings relating to eligibility factors under the program. The Committee bill changes existing law to require that applicants and participants also be provided with the opportunity to contest findings at a hearing that provides the basic elements of due process.

Finally, existing law provides that a knowing and willful obtaining of information from the State unemployment compensation agency under false pretenses, or disclosure of such information, by an officer or employee of HUD or any public housing agency, and any owner responsible for determining eligibility for or level of benefits, is a misdemeanor subject to a fine of not more than $5,000. In addition, an applicant or participant affected by a negligent or knowing disclosure of wage information may bring a civil action for damages against any officer or employee of any public housing agency or owner responsible for the unauthorized action. The Committee bill adds Internal Revenue Code information to the information that is covered by these provisions.

The Committee recognizes that the assumption of the Budget Committee that verification of tenant income through cross matching ***91** with IRS records is estimated to yield savings of $1.649 billion over five fiscal years. The Committee also notes that this provision requires an expenditure of $5 million in the first fiscal year to initiate this effort. The Committee also understands that HUD has initially reviewed the Committee language and estimates that there may need to be additional expenditures by the Department for additional HUD staff in order to carry out this program.

****466** The Committee recognizes that the actual savings assumed by CBO is based on a 1992 study conducted by the General Accounting Office (GAO) entitled, the Misrepresentation of Tenant Incomes in Subsidized Housing Programs (GAO Report 92–60). The GAO found, in a one-time computer match of IRS data with income information from approximately 174,000 HUD assisted households, that 21% of the assisted households and understated their incomes, thus resulting in the federal government paying out $41 million in excess subsidies that would not have been provided had tenants accurately reported actual income.

The Committee notes that housing organizations, including the Council of Large Public Housing Authorities (CLPHA), have indicated to the committee that there will almost invariably be a disparity, and thus difficulty in matching a tenant's income, between the income reported to the IRS and that reported for housing program purposes. These reasons include: 1) there are different definitions of income for housing programs and for IRS purposes; 2) there are differences in the income "year" used

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by the IRS and housing programs; and 3) that tenants are already subject to computer matching, [for example, 50% of existing tenants in assisted housing receive one or more forms of subsidy which are already subject to IRS verification (i.e. those tenants receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Food Stamps, and Medicaid)].

Furthermore, the Committee is concerned with the potential inefficiency of implementation of computer matching by HUD rather than the housing provider since it is the latter which will be charged with carrying out the necessary verifications and providing tenants with the due process opportunities. Some housing groups have challenged GAO's method of calculating erroneous rent subsidies in its report as being based upon 30% of "total understated wage, interest and dividend income" rather than the "adjusted" income upon which rent in HUD-assisted housing is based. Finally, the Committee recognizes that, at least with respect to project-based subsidy programs, housing providers are already careful to investigate reports of tenants failure to report employment. Such reports may originate with other residents, well aware that their rent is based on their income, and unwilling to allow defrauders to gain unfair advantage.

SECTION 3004–GNMA REMIC GUARANTEE FEES

Section 302 of the Committee Print provides Government National Mortgage Association (GNMA) the authority to charge flexible fees in a new multiclass security program known as Real Estate Mortgage Investment Conduit (REMIC). The Committee believes that this new program will provide several benefits: 1) investors will be able to purchase securities that match their cash flow ***92** needs; 2) borrowers under the Federal Housing Administration (FHA) and Veterans Administration (VA) single family home programs may be charged lower interest rates or points on their loans because there would be greater demand for the securities backed by these mortgages; and 3) fees charged for commitments and guarantees would help reduce the deficit.

****467** The Committee language requires GNMA to take such action as may be necessary to reasonably ensure that such portion of the value of the guarantees or commitments to guarantee as the Association determines is appropriate accrues to the benefit of future mortagagors as a class.

The provision also requires GNMA to submit a report to Congress for each Federal fiscal year, describing any activities with respect to guaranteeing and making commitments to guarantee REMICs. The report, to be submitted not later than 90 days after the end of the fiscal year for which the report is made, must identify the extent of such REMIC activities during the fiscal year, the size of each transaction closed during the fiscal year involving such securities, the number of mortgages involved in each such transaction, and the amount of the fees charged and earned by the Association for such transactions, including an estimate of the portion of the value that accrues to the mortgagor.

SECTION 3005–MUTUAL MORTGAGE INSURANCE FUND PREMIUMS

The Committee bill requires an accelerated amortization of the Federal Housing Administration (FHA) up-front premium, by requiring the Secretary of the Department of Housing and Urban Development (HUD) to increase the rate at which the one-time upfront insurance premium is recognized. The purpose of this provision is to give HUD the ability to adjust the rate at which FHA earns premiums on its Section 203(b) mortgage insurance programs, so that those premium earnings are in line with expectations of actual risk. Currently, HUD uses an accounting schedule which provides that the premium income is actually accounted for over a 28-year period, meaning that the premium is actually credited to HUD on an annual basis. The Committee bill gives HUD the discretion to accelerate the premium, taking into account any current audit finding and reserve analysis and information regarding the expected average duration of FHA mortgages.

The Committee expresses its concerns about the impact on borrowers who are seeking to refinance their mortgages in order to shorten the mortgage term and/or decrease the interest rate. The Committee believes that every effort should be made by HUD to retain such seasoned, relatively risk-free loans in the FHA portfolio to ensure the safety of the fund.

In the event that it is not determined to be an actuarial sound approach, the Committee intends that HUD shall review other alternative premium approaches designed to ensure that FHA mortgage insurance is a viable option for borrowers seeking to take advantage of lower interest rates in order to refinance their mortgages.

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***93** STATEMENTS MADE IN ACCORDANCE WITH HOUSE RULES

In accordance with clauses 2(l)(2)(B), 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made.

****468** COMMITTEE VOTE

(Rule XI, clause 2(l)(2)(B))

The Committee on Banking, Finance and Urban Affairs, with a quorum present and by voice vote, passed legislation to confirm with Budget Act requirements on May 6, 1993.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

(Rule XI, clauses 2(l)(3) (A) and (D), and rule X, clauses 2(b) (1) and (2) and 4(c)(2))

The Committee recommends that the House pass the legislative package since it accomplishes the objectives of the Budget Act.

ADVISORY COMMITTEE STATEMENT

(Section 5(b) of the Federal Advisory Committee Act)

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

INFLATION IMPACT STATEMENT

(Rule XI, clause 2(l)(4))

The Committee finds that the legislation will not have any impact on any inflationary trends in the national economy.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974

(Rule XI, clause 2(l)(3)(C))

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 1993.

Hon. Henry B. Gonzalez,
Chairman, Committee on Banking, Finance and Urban Affairs,
House of Representatives, Washington, DC.

Dr. Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation recommendations of the House Committee on Banking, Finance and Urban Affairs.

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If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

****469*94** CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Reconciliation Recommendations of the House Committee on Banking, Finance, and Urban Affairs.

3. Bill status: As ordered reported by the House Committee on Banking, Finance and Urban Affairs on May 6, 1993.

4. Bill purpose: The bill would make several changes in laws affecting direct spending revenues, including changes that would:

Require the Federal Reserve to transfer to the Treasury $213 million of accumulated surplus capital;

Give the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC) first claim, along with uninsured depositors, on the assets of all failed banks and thrifts, whether nationally-chartered or state-chartered;

Increase the fees the Government National Mortgage Association (GNMA) can charge to guarantee mortgage-backed securities, such as Real Estate Mortgage Investment Conduits (REMICs);

Increase the rent paid by beneficiaries of the Department of Housing and Urban Development's (HUD's) rental assistance programs by verifying their income using information provided by the Internal Revenue Service; and

Require HUD to increase the rate at which it earns up-front premiums collected under the Mutual Mortgage Insurance Fund single-family mortgage insurance program, thus resulting in smaller refunds to borrowers who prepay their mortgages.

5. Estimated cost to the Federal Government:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****470*95** Basis of estimate

Transfer Federal Reserve Surplus Capital: This provision would require the Federal Reserve to transfer $213 million from its surplus capital account to the Treasury over the period from 1997 to 1998. Absent any indication from the staff of the Federal Reserve that it would act to circumvent the budgetary effect of the legislation by changing its accounting methods, CBO estimates that the provision would increase federal revenues by $213 million over the period from 1994 to 1998. The effects of the provision would expire at the end of fiscal year 1998, however, making it possible that the provision would raise no revenue over a time period that extends beyond 1998.

The Federal Reserve's policy is to maintain the surplus capital account, a form of retained earnings, equal to its level of paid-in capital from member banks. The surplus, currently valued at about $3 billion, is not taken into account by the federal budget. The Federal Reserve adds to the surplus account from its earnings, primarily interest on its holdings of Treasury securities. After the Federal Reserve pays its operating expenses and member bank dividends and makes its addition to the surplus capital account, it voluntarily remits the remaining amount of earnings to the Treasury. Such payments are treated as revenues in the budget.

The bill would make the Federal Reserve payment of net earnings to the Treasury mandatory through the end of fiscal year 1998, and in addition would require the Federal Reserve to transfer $213 million from its surplus account to the Treasury in 1997 and 1998. That transfer would increase federal revenues. A secondary effect would have no overall impact on the

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federal budget: the Federal Reserve would hold fewer Treasury securities than it otherwise would, but the Treasury Department would not need to issue those same securities. Federal Reserve net earnings would decrease, exactly offset by lower interest costs to the Treasury.

Depositor Preference: Many states have enacted a depositor preference statute that effectively gives the FDIC and RTC ("standing in the shoes" of insured depositors), along with all uninsured depositors, a first claim on the assets of a failed financial institution chartered in those states. Currently, when banks or thrifts chartered in the non-depositor preference states fail, or a nationally chartered financial institution fails, the FDIC or RTC, uninsured depositors, and other creditors share on a pro rata basis any recoveries from assets that are sold in receivership. This bill would create a federal preference, overriding state law, for depositors at all failed national and state banks and thrifts. This means that proceeds from the sales of assets in the future would first go to all depositors–the FDIC or RTC (in place or insured depositors) and uninsured depositors. Only when all depositors have recovered 100 percent of losses would general creditors recover anything. Thus, we expect that receipts to the federal deposit insurance funds from asset sales would be higher, and insurance losses would be lower, than under current law.

As a result of this depositor preference, creditors who are not depositors are unlikely to recover any of their claims on failed institutions. Rather, the federal insurance agencies and the uninsured depositors, with first claim on the institutions' assets, would recover ****471*96** on a pro rata basis the amount that the other creditors would have recovered in states without a depositor preference law. Based on the recent experience of resolutions handled by the FDIC and the RTC, CBO expects that about 0.7 percent of failed bank assets, and 0.2 percent of failed thrift assets would have been recovered by general creditors. Because most of the deposits in institutions are insured (an average of only 3 percent of banks' deposits are uninsured, while 0.5 percent of thrifts' deposits are uninsured), the FDIC and the RTC would recover most of the amounts that otherwise would have gone to general creditors. The budgetary impact, however, would occur not in the year when the institution is resolved, but rather over a period of five-to-seven years as the deposit insurance agencies sell off the assets of the failed institution. CBO estimates that a national depositor preference statute would result in savings of about $490 million for the FDIC over the 1994–1998 period and about $260 million for the RTC for the same period.

GNMA REMIC Guarantee Fees: Current law limits to 6 basis points a year the fee that the Government National Mortgage Association (GNMA) can charge to guarantee mortgage-backed securities. The Administration believes that this is not sufficient to cover the costs associated with guaranteeing multi-class mortgage-backed securities, such as Real Estate Mortgage Investment Conduits (REMICs). This provision would allow GNMA to charge higher fees if necessary. Even though large amounts of privately guaranteed REMICs are currently being issued, the presence of a federal guarantee would make GNMA REMICs very attractive to some investors. The savings shown in this estimate are based on $50 billion of GNMA REMICs being guaranteed per year and represent the estimated annual guarantee fee receipts. CBO expects that the increase in the fee would be 4 basis points per year, that this fee would be fully paid on a present value basis when the guarantee is granted, and that the securities would be prepaid on average during the 10th through the 12th years.

IRS Income Check: HUD currently provides rental assistance to about 4.4 million low-income households. To qualify for this assistance, a household generally must have income not exceeding 50 percent of the local area median. Subsidized households must pay 30 percent of their adjusted incomes towards the rental costs. HUD pays the difference between this tenant contribution and the actual rent or, in the case of Section 8 vouchers, the payment standard. Initial eligibility and the resulting cost to the federal government depend upon the tenant household's income.

This provision would allow the HUD Secretary to obtain income data from the IRS to verify the information furnished by the tenant.

The savings shown in the estimate are based mainly on a study released by the General Accounting Office (GAO) in 1992. For this study, the GAO matched IRS income data for about 4 percent of HUD-assisted households with that reported to HUD. This survey indicated that in 1989 one in five of the subsidized tenants may have understated their incomes. The savings estimates for this option assume that the necessary systems at HUD would be ready by the beginning of 1996. CBO also assumed that the 4 percent sample selected by GAO was representative of all assisted households.

****472*97** This provision would have the effect of decreasing federal outlays for subsidized housing by increasing the required contribution for households that understate their income. The five-year savings totaling about $1.0 billion that

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appear in the direct spending table represent the effects of the proposal on households under assistance at the start of 1994; this amount is direct spending because it comes from funds that have already been appropriated. The estimated authorization savings are those that would be associated with additional units that would receive assistance over the 1994–1998 period if the program were funded at levels assumed in the CBO baseline.

Refunds of Federal Housing Administration (FHA) Premiums: The FHA charges an up-front premium for mortgages insured under its single-family mortgage insurance program. If a mortgage is prepaid, part of that premium is considered unearned and is refunded to the borrower. This legislation would reduce federal spending by decreasing the amount of unearned premiums refunded to FHA-insured borrowers who prepay their mortgages before the entire up-front premium is earned. CBO's estimate is based on a proposed amortization schedule provided by HUD officials. Under the current amortization schedule, premium refunds are made to borrowers prepaying through the last two years of a thirty-year mortgage. Under the proposed schedule, premiums would be considered fully earned and refunds would end after seven years.

The estimated saving from decreased refunds have been calculated on a present-value basis, consistent with credit-reform procedures established by the Budget Enforcement Act of 1990. The amount shown in fiscal year 1994 includes the present-value of all saving associated with mortgages insured in that year ($25 million) as well as all mortgages insured prior to enactment of this provision ($309 million). The amounts shown in later years reflect only the impact on mortgages insured in those years.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn, Mary Maginniss, Marjorie Miller, Brent Shipp, and Mark Booth.

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY TITLE III OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 11 OF THE FEDERAL DEPOSIT INSURANCE ACT

Sec. 11. (a)***

* * * * * * *

***98** (c) Appointment of Corporation as Conservator or Receiver.–

(1)***

* * * * * * *

(13) Additional powers.–In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution–

(A) [subject to subparagraph (B),] this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

[(B) the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims

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of depositors priority over those of other creditors or claimants; and]

[(C)] (B) the Corporation as receiver of the institution may–

(i) liquidate the institution in an orderly manner; and
(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) Powers and Duties of Corporation as Conservator or Receiver.–

(1)***

* * * * * * *

[(11) Distribution of assets.–

[(A) Subrogated claims; claims of uninsured depositors and other creditors.–The receiver shall–

[(i) retain for the account of the Corporation such portion of the amounts realized from any liquidation as the Corporation may be entitled to receive in connection with the subrogation of the claims of depositors; and
[(ii) pay to depositors and other creditors the net amounts available for distribution to them.

[(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses.–In any case in which funds remain after all depositors, creditors, other claimants, and administrative expenses are paid, the receiver shall distribute such funds to the depository institution's shareholders or members together with the accounting report required under paragraph (15)(B).]

(11) Depositor preference.–

(A) In general.–Subject to section 5(e)(2)(C), amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

***99** (i) Administrative expenses of the receiver.
(ii) Any deposit liability of the institution.
(iii) Any claim of an employee of the institution, other than a senior executive officer (as defined by the Corporation pursuant to section 32(f)), for pay accrued but unpaid as of the date the receiver was appointed for the institution.
(iv) Any other general or senior liability of the institution (which is not a liability described in clause (v) or (vi)).
(v) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (vi)).
(vi) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

(B) Effect on state law.–

(i) In general.–The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.
(ii) Procedure for determination of inconsistency.–Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A)(i) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.
(iii) Judicial review.–The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

(C) Accounting report.–Any distribution by the Corporation in connection with any claim described in subparagraph (A)(vi) shall be accompanied by the accounting report required under paragraph (15)(B).

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(g) Subrogation of Corporation.–

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(1)***

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(4) Applicability of state law.–[If the Corporation] Subject to subsection (d)(11), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

* * * * * * *

***100** SECTION 7 OF THE FEDERAL RESERVE ACT

DIVISION OF EARNINGS

Sec. 7. [After all necessary expenses of a Federal reserve bank shall have been paid or provided for, the stockholders shall be entitled to receive an annual dividend of 6 per centum on the paid-in capital stock, which dividend shall be cumulative. After the aforesaid dividend claims have been fully met, the net earnings shall be paid into the surplus fund of the Federal reserve bank.]

(a) Dividends and Surplus Funds of Reserve Banks.–

(1) Stockholder dividends.–

(A) In general.–After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders of the bank shall be entitled to receive an annual dividend of 6 percent on paid-in capital stock.

(B) Dividend cumulative.–The entitlement to dividends under subparagraph shall be cumulative.

(2) Deposit of net earnings in surplus fund.–That portion of net earnings of each Federal reserve bank which remains after dividend claims under subparagraph (A) have been fully met shall be deposited in the surplus fund of the bank.

(3) Payment to treasury.–During fiscal years 1994 through 1998, any amount in the surplus fund of any Federal reserve bank in excess of the amount equal to 3 percent of the total paid-in capital and surplus of the member banks of such bank shall be transferred to the Board for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury.

[The net earnings derived] (b) Use of Earnings Transferred to the Treasury.–The net earnings derived by the United States from Federal reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. Should a Federal reserve bank be dissolved or go into liquidation, any surplus remaining, after the payment of all debts, dividend requirements as hereinbefore provided, and the par value of the stock, shall be paid to and become the property of the United States and shall be similarly applied.

[Federal reserve banks] (c) Exemption From Taxation.–Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

SECTION 904 OF THE STEWART B. MCKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

SEC.904.PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS.

(a)***

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(b) Applicant and Participant Consent.–As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial ***101** and periodic review of an applicant's or participant's income (including the Indian housing program under title II of the United States Housing Act of 1937), and to assure that the level of benefits provided under the program is correct, the Secretary may require that an applicant or participant–

(1) sign a consent form approved by the Secretary authorizing the Secretary, the public housing agency, or the owner responsible for determining eligibility for or level of benefits to request current or previous employers to verify salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits; [and]

(2) sign a consent form approved by the Secretary authorizing the Secretary or the public housing agency responsible for determining eligibility or level of benefits to request a State agency charged with the administration of the State unemployment law to release wage information with respect to such applicant or participant or information regarding whether such applicant or participant is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such applicant or participant[.]; and

(3) sign a consent form approved by the Secretary authorizing the Secretary to request the Commissioner of Social Security and the Secretary of the Treasury to release information pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 with respect to such applicant or participant for the sole purpose of the Secretary verifying income information pertinent to the applicant's or participant's eligibility or level of benefits.

[This] Except as provided in this subsection, this consent form shall not be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code of 1986.

(c) Access to [State Employment] Records.–

(1)***

(2) Applicant and participant protections.–(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law or pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 from the Commissioner of Social Security or the Secretary of the Treasury, officers and employees of the Department of Housing and Urban Development and (in the case of information obtained pursuant to such section 303(i)) representatives of public housing agencies may only use such information–

(i)***

(ii) in the case of an owner or public housing agency responsible for determining eligibility for or level of benefits, to inform such owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner or public housing agency to verify such applicant's or participant's income information.

***102** (B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to–

(i) the amount of the wages, other earnings or income, or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages, other earnings or income, or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages, other earnings or income, or benefits.

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(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings at a hearing that provides the basic elements of due process, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) Penalty.–(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by [(i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or] (i) a negligent or knowing disclosure of information referred to in this section, section 303(i) of the Social Security Act, or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), such section 6103(l)(7)(D)(ix), or any regulation implementing this section, such section 303(i), or such section 6103(l)(7)(D)(ix), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), such section 6103(l)(7)(D)(ix), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against ***103** any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

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SECTION 306 OF THE NATIONAL HOUSING ACT

MANAGEMENT AND LIQUIDATION FUNCTIONS–GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Sec. 306. (a)***

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(g)(1)***

* * * * * * *

(3)(A)***

* * * * * * *

(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guaranty of, or commitment to guaranty, multiclass securities backed by a trust or pool of securities or notes guarantied by the Association under this subsection and other related fees shall be charged by the Association in an amount not to exceed the value, as determined by the Association, of the guarantee or commitment to guarantee. The Association shall take such action as may be necessary to reasonably assure that such portion of the value of the guaranties or commitments to guaranty as the Association determines is appropriate accrues to the benefit of mortgagors under mortgages executed after the date of the enactment of this subparagraph by or upon which such securities or notes are backed.

(ii) For each Federal fiscal year, the Association shall submit a report to the Congress describing any activities of the

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Association with respect to guarantying and making commitments to guaranty multiclass securities described in clause (i). The report shall be submitted not later than 90 days after the end of the fiscal year for which the report is made and shall identify the extent of such activities during the fiscal year, the size of each transaction closed during the fiscal year involving such securities, the number of mortgages involved in each such transaction, the amount of the fees charged and earned by the Association for such transactions, and any persons receiving payments for any services provided with respect to any such transactions and the amounts of such payments, and shall include an estimate of the portion of the value of the guarantee or commitment to guarantee accruing to the benefit of mortgagors and a description of any action taken by the Association to ensure such accrual.

(iii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence ***104** of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

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****473*105** TITLE IV–COMMITTEE ON EDUCATION AND LABOR

House of Representatives,
Committee on Education and Labor,
Washington, DC, May 17, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Pursuant to the reconciliation instructions contained in the conference agreement on the budget resolution for Fiscal Year 1994, I am pleased to transmit recommendations approved by the Committee on Education and Labor on May 12, 1993, to reduce direct spending for programs within the Committee's jurisdiction.

The conference report instructs the Committee on Education and Labor to submit legislation to reduce direct spending for programs within its jurisdiction by $5.817 billion over the five year period of fiscal years 1994–1998. The Committee recommendations set forth in the accompanying legislation respond to the reconciliation instructions.

I hope that these recommendations will be of assistance to your Committee in meeting the reconciliation targets.

With kind regards,

Sincerely,

William D. Ford,
Chairman.

PURPOSE

The conference report on House Concurrent Resolution 64, Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, as adopted by the House of Representatives on March 31, 1993, included instructions to the Committee on Education and Labor to recommend changes in laws within its jurisdiction sufficient to reduce direct spending by $5.817 billion over the period of fiscal years 1994 through 1998. Those instructions included policy assumptions involving the creation of a direct student loan program, a requirement that States share in the default costs associated with the Federal Family Education Loan Program, and changes to the Employee Retirement and Income Security Act of 1974 (ERISA) to permit the enhanced identification of Medicare and Medicaid third-party liability.

The purpose of the Committee's recommendations set forth in the accompanying legislation is to respond to those instructions.

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****474*106** COMMITTEE ACTION

On May 12, 1993, the Committee on Education and Labor, by a voice vote, with a quorum being present, ordered the Committee's reconciliation recommendations, as amended, favorably reported to the Committee on the Budget. The Committee earlier adopted, by voice vote, an amendment offered by Mr. Petri expressing the sense of the Committee on Education with respect to student loans collections by the Internal Revenue Service.

SUMMARY

The Committee's reconciliation recommendations:

Create a new direct loan program to take the place of the existing guaranteed student loan program;

Require States to assume a portion of the responsibility for default costs associated with excessive default rates for student loans within a State; and

Amend the Employee Retirement Income Security Act of 1974 to permit the identification and allocation of proper third party liability with respect to Medicare and Medicaid coverage under health plans.

STATEMENT

STUDENT LOAN REFORM ACT OF 1993

The Committee recommendation provides for sweeping changes to the current student loan programs. Part B of Title IV (Federal Family Education Loan program) would be phased out over a four-year period, and Part D (Federal Direct Loan Demonstration program) would be replaced by the Federal Direct Student Loan Program (FDSLP). These changes are founded on two basic, borrower-oriented principles. First, the process by which a student and his or her parents can obtain loans for the student's postsecondary education would be simplified, and the cost of the student loan program to taxpayers and borrowers will be reduced. Second, any student wanting to take a lower-paying job that serves his or her community would be encouraged to do so through flexible and affordable repayment terms for education loans.

The first principle generates reforms to the "front end" of the current system, that is, to the mechanisms for obtaining and financing a student loan. The current system of 7,800 lenders, 46 guarantee agencies and numerous servicers and secondary markets is error-prone, hard to monitor and cumbersome to borrowers and schools. Under the FDSLP, student loans, including loans for parents of students, would be obtained directly from the student's institution of higher education, without application to an outside lender. The proposed program would eliminate the complex procedures of obtaining a loan from a qualified lender, loan insurance by guaranty agencies and reinsurance by the Secretary of Education and the frequent sale of loans to secondary markets and other holders. Under the FDSLP most students would be able to receive all their financial aid through "one-stop shopping" at their institution's financial aid office.

****475*107** Qualified institutions of higher education that chose to do so and were approved by the Secretary would originate an education loan for the student or the student's parents. Institutions which originated loans would receive an administrative fee for each borrower served. Institutions would not be required to originate loans. A student at a participating institution of higher education that did not qualify or wish to originate FDSLP loans would be able to obtain his or her loans directly, as well, through another institution of higher education or an agency that would act as an "alternative" originator of student loans.

Institutions would be only responsible for originating loans to students and parents. The responsibility for servicing loans would be undertaken by contractors selected by and responsible to the Department of Education.

It is important to note that the funding for this program would be treated as mandatory or entitlement spending as is the case with the current student loan program. Direct loan capital will not be limited by congressional appropriations, and there will

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be no gaps in access to capital for any eligible student or parent. The mandatory spending for this program would include all aspects of the program: the loan capital and administrative and servicing costs.

The second principle generates reforms that, for the most part, focus on the "back end" of the system, that is, repayment of loans by student borrowers or their parents. In this area, the FDSLP would provide for a variety of flexible repayment plans–including fixed, extended, graduated and income-contingent schedules. Borrowers would choose the repayment option best suited to their individual needs. All student borrowers in the proposed program would be able to choose from these repayment plans. Student borrowers who have Federal Family Education Loan program loans under the current system could also repay their loans based on their income. Students will also be able to change their repayment schedule if their circumstances change. These repayment plans would likely discourage defaults, since borrowers would be better able to manage the repayment of their loans. These repayment plans would also encourage students to seek postsecondary education, since loan repayment would be less burdensome. They would also permit students to pursue public service either for a few years after completing their education or as a career since their loan burden need never be disproportionate to their income.

Students would receive significant additional benefits under the FDSLP. Students currently pay, on average, 6.5% of loan principal as an origination fee and insurance premium–an amount which is deducted from their loan proceeds. Under the FDSLP, students will pay a fee of 5% while the program is being phased in and 3.65% once the program is fully phased in. In addition, when the FDSLP is fully phased in, the interest rate for student borrowers would be approximately .6% lower than the current program. In short, students would receive more of the money they borrowed up front to pay for their postsecondary educational costs, and students would repay their loans at a lower interest rate, reducing their repayment burden.

****476*108** These reforms to the student loan system would also result in significant cost savings to taxpayers. Expected savings from the proposed direct lending system are estimated to be $4.3 billion through fiscal year 1998, with an additional $2 billion each year after the FDSLP is fully implemented. These savings would conform to the policy assumptions and instructions to the Education and Labor Committee contained in the FY 1994 budget resolution.

Direct loans have been extensively considered by the Committee. During the past two and one-half years, direct loans have been widely discussed in the press as well as being the subject of numerous reports and analyses by the Congressional Budget Office, the General Accounting Office, the Congressional Research Service, the Department of Education, the Office of Management and Budget and various other public and private organizations. During the Committee's deliberations on the reauthorization of the Higher Education Act in the last Congress, direct loans were discussed by 24 witnesses in 13 different hearings, including three hearings in Washington, D.C. and 10 field hearings. Most of one Washington hearing on student loans was devoted to direct loans. In fact, the reauthorization legislation reported by the Committee contained a phased-in direct loan very similar to the program contained in this bill.

The Committee also wishes to express its intent with respect to some specific aspects of the direct loan program.

First, the Committee directs the Department of Education to make every reasonable effort to ensure that minority- and women-owned businesses and minority-controlled joint ventures receive competitive procurement contracts under the direct loan program for such services as: principal and interest loan collections, defaulted loan collections, default prevention programs, central data systems development and operation and such other services as the Secretary may determine to be necessary to effect the direct loan program. The Department is further directed to report annually to the Committee on Education and Labor on the level of minority contracting achieved under the direct loan program and the efforts undertaken to ensure participation by minority- and women-owned businesses.

Second, the Committee notes that section 454(a)(1)(D) relating to institutional participation agreements eliminates the requirement that all institutions participating in the direct loan program delay for 30 days the disbursement of loans to first-year borrowers. However, the Secretary may require individual institutions to implement delayed disbursement where such action would protect the financial interest of the United States or promote the purposes of the direct loan program.

Third, the Committee intends that the provision in section 455(d)(4), which allows the Secretary on a case-by-case basis to offer borrowers alternative repayment plans to address a borrower's exceptional circumstances, be used to offer the borrower increased flexibility in repaying the principal and interest on his or her loan and not be used to cancel such loan.

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Fourth, the Committee intends that the provision in 455(e)(5), that allows the Secretary to limit the amount of interest that may be capitalized on a loan in repayment under an EXCEL account, ****477*109** be used only in exceptional circumstances, such as when the interest has capitalized to become a multiple of the principal.

Fifth, under this measure, the Department of Education is exempt from the provisions of section 431 of the General Education Provisions Act for the first year of the direct loan program in order to ensure that they are able to meet the implementation schedule contained in this legislation. The Committee intends that this is a limited and temporary exemption and that all rules, regulations, guidelines, interpretations and orders that are executed during this one year period will be subjected to section 431 requirements at the conclusion of the exemption.

Sixth, after July 1, 1997, the interest rate paid by student and parent borrowers is determined by adding "the bond equivalent rate of the security with a comparable maturity, as established by the Secretary" plus a designated percentage. The Committee intends that this new interest rate students will have the effect of reducing borrower interest rates by 0.6 percent. The Committee intends to closely monitor this new interest rate structure to insure that it results in a lower interest rate to borrowers.

Seventh, this measure provides for the collection of income information for borrowers who choose the option of repaying their loans on a income-contingent basis through an EXCEL account. The Committee intends that in the case of Puerto Rico, the Secretary may obtain the information regarding the income of a borrower for purposes of the EXCEL Account from the Puerto Rico Treasury Department to the extent authorized by the Puerto Rico Internal Revenue Code.

STUDENT LOAN RISK-SHARING ACT OF 1993

The Committee recommendation amends section 428 of the Higher Education Act of 1965 to add a requirement that each State share financial responsibility for a portion of the default costs above certain specified levels at institutions located in that State. This provision would encourage an increase in the States' role in monitoring the quality of institutions in the State, particularly in its licensing function. The State should bear some of the financial burden for high default costs in a State because it shares with the Federal Government an interest in ensuring quality education, protecting the consumer and generating a positive economic impact from the public investment in education.

Expected savings from this risk-sharing provision are estimated at $300 million through fiscal year 1998. These savings would conform to the policy assumptions and instructions to the Education and Labor Committee contained in the FY 1994 budget resolution.

ERISA AMENDMENTS RELATING TO GROUP HEALTH PLANS

Coordination of ERISA preemption rules with title XIX provisions providing for liability of third parties

In 1986, the Employee Retirement Income Security Act of 1974 (ERISA) was amended to give States the ability to comply with the Federal requirement that Medicaid be the secondary payor for all eligible individuals also covered under group health plans.

****478*110** Under the amendments to Title XIX of the Social Security Act contained in the Committee on Energy and Commerce's title of this reconciliation bill, additional requirements relating to third-party payers are imposed on the States as a condition of receiving Federal matching Medicaid funds. The Committee has adopted these additional amendments to ERISA to permit States to enforce laws enacted as a result of these additional Medicaid requirements.

Continued coverage of costs of a pediatric vaccine under group health plans

The Committee has adopted a corresponding amendment to ERISA to create a workable enforcement mechanism for the requirement included in the title of this bill reported by the Committee on Energy and Commerce. Under that requirement

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(which implements President Clinton's initiative to assure that all children are immunized), group health plans are prohibited from reducing their coverage of the costs of pediatric vaccines below the level in effect on May 1, 1993.

Temporary rules governing preemption of certain state laws

For the past several years, the Committee has been examining the problems of our current health care system. Most Americans have concluded that the system is broken and is badly in need of repair. But the difficulty we face as we consider the various reform proposals is that few elements of reform have been tried or tested in the United States.

Normally, Federal legislation is enacted after a period of experimentation by States so that a thorough evaluation of the results can be undertaken prior to moving forward on a national level. But until recently there has been little State experimentation; the role of States as laboratories for change has not really evolved. Many argue, perhaps with some validity, that the primary obstacle for States has been Federal law: the Employee Retirement Income Security Act of 1974 (ERISA) and its broad language overriding State laws.

Because of a desire to shield large multi-state employers from conflicting and duplicative State requirements, the framers of ERISA adopted the most expansive Federal approach: States were prohibited from enforcing laws that "related to" employee benefit plans, except for State laws covering insurance, banking and securities. And although States could regulate insurance,they could not evade the prohibition on regulating employee benefit plans by "deeming" those plans to be insurers.

So in their well-intentioned effort to protect employers and unions whose plans operated across State lines, the framers of ERISA also made it more difficult for us today to evaluate the workability of key elements of the various reform proposals.

Despite the obvious ERISA barriers, however, some States have moved forward to enact reforms. In some cases, those State efforts have proceeded smoothly. In others, they have been stymied by legal challenges. Not surprisingly, some of these latter States have come to the Congress for help.

Our colleagues on the Committee on Ways and Means have adopted amendments exempting the Hawaii Prepaid Health Care ****479*111** Act and the Maryland all-payer hospital rate-setting system from preemption, notwithstanding the fact that preemption of State laws by ERISA is an issue solely within the jurisdiction of the Committee on Education and Labor. This Committee would have preferred to defer consideration of the matter of individual State problems with ERISA until Congress begins its debate on the Administration's health care reform proposal. However, the action of the Committee on Ways and Means and the particular circumstances surrounding some of the legal challenges to State law require the Committee to consider these problems at this time. Although enactment of comprehensive national health care reform in a way that redefines the role of the States may well be the best solution to the current difficulties, some States face immediate economic difficulty if legal challenges to certain portions of their law are upheld. Even more importantly, however, residents of these States may face substantial hardships as well in the form of increased tax burdens, reduction in services, hospital closings, and a longer wait until the most pressing problems in the current delivery system are solved.

For this reason, the Committee has considered and adopted a handful of narrowly crafted temporary amendments to the preemption provisions contained in section 514 of ERISA in order to permit the affected States to enforce their laws without further legal challenge.

The Committee recommendation amends ERISA to provide 2-year exemptions from preemption for certain provisions of State law, as follows:

(1) the Hawaii Prepaid Health Care Act (the provisions of the Hawaii law that existed prior to ERISA are currently not preempted; this amendment would give Hawaii the right to enforce all the provisions of its law prospectively, including post-ERISA provisions);

(2) the provisions in Maryland law establishing the Health Services Cost Review Commission and authorizing an all-payer hospital rate setting system;

(3) the provisions in Minnesota law imposing a 2% gross receipts tax on providers, permitting providers to pass through

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this tax to insurers and group health plans, and requiring all insurers and plans to participate in data collection programs, such as the use of uniform claims and billing forms.

(4) the provisions of New York's Public Health Law, including:

The basic all-payer hospital rate setting system,

The imposition of a hospital rate surcharge of 13% on payers other than Blue Cross and Medicaid,

The variable surcharge for HMOs to the extent that the revenue generated is used for carrying out the purposes of the program and not to satisfy other State financial needs,

And the special allowances for bad debt, charity care, health services, financially distressed hospitals, and excessive malpractice insurance (all of which are collected annually, pooled, and distributed to hospitals based on the hospital's share of bad debt and charity care cases).

Although these amendments are narrowly drafted, the Committee intends no inference to be drawn that the provisions specifically ****480*112** referenced in the Committee's text are in fact preempted by ERISA. Nor does the Committee intend an inference to be drawn that other provisions of State law which are not specifically referenced in the Committee's text are presumed to be preempted by ERISA.

Finally, regardless of how individual members of the Committee may feel about whether continued State health reform activity is desirable in the short-term, substantial agreement exists that comprehensive national reform is the real solution to the problems we face.

SECTION ANALYSIS

SUBTITLE A–FEDERAL DIRECT LOAN PROGRAM

Section 4001

Section 4001 provides that the short title of this subtitle is the Student Loan Reform Act of 1993.

Section 4002

Section 4002 provides a substitute for Part D of Title IV of the Higher Education Act. Redesignation creates the following statutory structure for the Federal Direct Student Loan Program:

PART D–FEDERAL DIRECT STUDENT LOAN PROGRAM

Sec. 451.	Purpose; Program Authorization.
Sec. 452.	Funds for Origination of Direct Student Loans.
Sec. 453.	Section by the Secretary.

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Sec. 454.	Agreements with Institutions.
Sec. 455.	Terms and Conditions of Loans.
Sec. 456.	Contracts.
Sec. 457.	Reports.
Sec. 458.	Regulatory Activities by the Secretary.
Sec. 459.	Funds for Administrative Expenses.

Below is a summary of the new sections of Part D:

Section 451

Section 451 amends the program and payment authority to reflect the replacement of the current Federal direct loan demonstration program with a new "phased-in" Federal Direct Student Loan Program that provides the Federal lending mechanism through which students and their parents would be able to obtain loans to pay for postsecondary education.

Purpose

Consistent with the underlying principles of this title, the purposes of this part is to: (1) simplify the delivery of student loans to borrowers and eliminate borrower confusion; (2) provide borrowers with a variety of repayment plans, including an income contingent repayment plan through the EXCEL Account, so that borrowers have flexibility in managing their student loan repayment obligations and so that these obligations do not foreclose community service-oriented career choices for them; (3) replace, through an orderly transition, the Federal Family Education Loan program with the Federal Direct Student Loan Program; (4) avoid the unnecessary ****481*113** cost to taxpayers and borrowers and the administrative complexity associated with the Federal Family Education Loan program through the use of a direct student loan program; and (5) create a more streamlined student loan program that can be managed more effectively at the Federal level.

Program authority

Section 451(b) provides that, in accordance with the Federal Direct Student Loan Program, such sums as may be necessary for making Federal Direct Student Loan Program loans would be made available to all eligible students in attendance at participating institutions of higher education selected by the Secretary, as well as to the eligible parents of these students, to enable these students to pursue their courses of study at the institutions of higher education during the period beginning on July 1, 1994. Loans under the Federal Direct Student Loan Program would be made by participating institutions of higher education that also have agreements with the Secretary to originate Federal Direct Student Loan Program loans, or by alternative originators designated by the Secretary to make these loans to students in attendance at participating institutions, as well as to the eligible parents of these students.

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Section 452

This section sets forth funding provisions applicable to loan origination under the Federal Direct Student Loan Program. This section requires the Secretary to provide funds for student or parent loans under the Federal Direct Student Loan Program directly to a participating institution of higher education with an origination agreement under section 454(b), or through an alternative originator designated by the Secretary, on the basis of the need and eligibility of students (and their parents) for loans at each participating institution of higher education.

Origination payment

This section requires the Secretary to pay fees to an institution of higher education originating loans under the new program. Payment levels would be established by the Secretary and would assist in meeting the cost of loan origination at the institution of higher education. These fees would be based on all Federal Direct Student Loan Program loans made to an individual borrower in an academic year and would be subject to a sliding scale that decreases the amount of these fees as the number of borrowers increases. The Secretary is also authorized to pay fees to alternative originators of Federal Direct Student Loan Program loans for their loan origination services.

For academic year 1994–1995, the fees paid to participating institutions of higher education who originate Federal Direct Student Loan Program loans would not exceed a program-wide average of $10 per borrower for all the Federal Direct Student Loan Program loans made to the borrower in the same academic year. The Secretary would establish these fees for subsequent academic years in regulations. Fees for alternative origination of Federal Direct Student Loan Program loans would be established in accordance with ****482*114** the terms of the contract between the Secretary and the alternative originator.

Loan accessibility

This section provides that no institution of higher education is deemed to have a right to participate in the Federal Direct Student Loan Program, to originate Federal Direct Student Loan Program loans, or to perform any Federal Direct Student Loan Program function. However, this provision could not be construed so as to limit the entitlement of an eligible student who is attending a participating institution of higher education, or the eligible parent of that student, to borrow under the Federal Direct Student Loan Program.

Section 453

This section focuses on selection requirements for the phase-in portion of the Federal Direct Student Loan Program, prior to full implementation of the program.

Section 453(a) requires the Secretary to enter into agreements with institutions of higher education (under section 454(a)) to participate in the Federal Direct Student Loan Program, as well as agreements with institutions of higher education (under section 454(b)) to originate loans in the program, for academic years beginning on or after July 1, 1994. This section also requires the Secretary to provide alternative origination services (through which an entity, other than the participating institution of higher education at which the student is in attendance, would originate the Federal Direct Student Loan Program loan). These services would be provided through one or more contracts under section 456 or such other means as the Secretary may provide, for students attending an institution of higher education that is participating in the Federal Direct Student Loan Program but not originating Federal Direct Student Loan Program loans. Agreements for the first year of the program would, to the extent feasible, be entered into not later than January 1, 1994.

Phase-in goals

Section 453(a) also provides that, in order to ensure an expeditious and orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program, the Secretary is required to determine the number of institutions with which to enter into participation or origination agreements in a given academic year consistent with the following goals:

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(1) for academic year 1994–1995, 4 percent of the new Federal student loan volume under the Federal Direct Student Loan Program and the Federal Family Education Loan program combined would be comprised of Federal Direct Student Loan Program loans; (2) for academic year 1995–96, this proportion would increase to 25 percent; (3) for academic year 1996–1997, this proportion is expected to increase to 60 percent; and (4) for academic year 1997–1998, Federal Direct Student Loan Program loans would comprise all of the new student loan volume under parts B and D of title IV of the Act.

Further, section 453(a) provides that the requirements of the Cash Management Improvement Act of 1990 (P.L. 101–453), which ****483*115** is designed to facilitate coordination betweeN federal anD state governments on the use of Federal funds, would apply to the Federal Direct Student Loan Program only to the extent specified in a schedule established by the Secretaries of Education and the Treasury, but not later than July 1, 1998. This temporary exemption allows the provisions of the Cash Management Improvement Act, which takes effect on July 1, 1994, to be phased in on an orderly schedule, consistent with the implementation plan for the Federal Direct Student Loan Program.

Selection criteria

Section 453(b) sets forth the criteria to be used by the Secretary in selecting institutions to participate in the Federal Direct Student Loan Program and to originate Federal Direct Student Loan Program loans. Each institution of higher education desiring to participate in the Federal Direct Student Loan Program would be required to submit an application to the Secretary containing such information and assurances as the Secretary may require. In order to include a variety of participants prior to full implementation of the Federal Direct Student Loan Program, the Secretary would be required to select institutions to participate in the first phase of the program, prior to full implementation of the Federal Direct Student Loan Program, from among eligible applicants by categorizing them according to their anticipated loan volume, the length of their academic programs, and organizational control (such as public, private non-profit, or proprietary control). The Secretary would then select participants that are reasonably representative of institutions in these respective categories, and would, if necessary to carry out the purposes of the Federal Direct Student Loan Program, select additional institutions.

Further, section 453(b) authorizes the Secretary to enter into a supplemental agreement with a participating institution of higher education, or a consortium of institutions, that desires to originate Federal Direct Student Loan Program loans and satisfies additional criteria. For academic year 1994–1995, the Secretary is authorized to approve an institution of higher education to originate Federal Direct Student Loan Program loans only if the institution of higher education: (1) made loans under the Federal Perkins Loan program in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 462(g) of the Act for the most recent fiscal year for which data is available; (2) was not on the reimbursement system of payment under the Federal Pell Grant program, the Federal Supplemental Educational Opportunity Grant program, the Federal Work-Study program, or the Federal Perkins Loan program; (3) was not overdue on program or financial reports or audits required under title IV of the Act; (4) was not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c) of the Act; (5) had not, in the Secretary's opinion, had significant deficiencies identified by the State postsecondary review entity under subpart 1 of part H of title IV of the Act; (6) had not, in the opinion of the Secretary, had severe program deficiencies for any of the programs under title IV of the Act, including those deficiencies demonstrated by audits, and program reviews conducted during the ****484*116** five calendar years prior to the institution's application to originate Federal Direct Student Loan Program loans; (7) provided an assurance that it has no delinquent outstanding debts to the United States, unless these debts are currently being repaid under, or in accordance with, a repayment arrangement satisfactory to the United States, or the Secretary, in his or her discretion, determined that the existence or amount of these debts had not been finally determined by the cognizant Federal agency; and (8) met other provisions the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of the Federal Direct Student Loan Program.

Section 453(b) also provides that, for academic year 1995–1996 and subsequent academic years, the Secretary would be required to publish regulations governing the selection of institutions to originate Federal Direct Student Loan Program loans.

Consortia

Finally, this section adds an authority for eligible institutions to apply to originate Federal Direct Student Loan Program loans for students in attendance at the institution as consortia, subject to requirements prescribed by the Secretary. Each institution

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of higher education in a consortium would be required to meet the eligibility requirements for participation in the Federal Direct Student Loan Program and to have a participation agreement with the Secretary; an institution of higher education that is not eligible to originate loans in the Federal Direct Student Loan Program would not be able to join a consortium. The consortia provision facilitates direct lending by encouraging an institution of higher education that is eligible to participate in the Federal Direct Student Loan Program but would not be originating Federal Direct Student Loan Program loans to use the origination services of another member of the consortium.

Section 454

Section 454 provides for implementation of the Federal Direct Student Loan Program.

Participation agreements

Each institution of higher education wishing to participate in the program would be required to sign an agreement with the Department. This standard agreement would set forth the terms and conditions for participation, including institution of higher education responsibilities and provisions for termination of the agreement within a fixed, but renewable, time period. The participation agreement under section 454(a) provides for the establishment and maintenance of the Federal Direct Student Loan Program at the institution of higher education, under which the institution of higher education would (1) identify eligible students who seek student financial assistance in accordance with section 484 of the Act; (2) estimate the need of each such student (as required by need analysis provisions of part F of title IV of the Act) for a Federal Direct Student Loan Program loan; and (3) set forth a schedule for disbursement of the proceeds of the Federal Direct Student Loan Program in installments consistent with the requirements of section ****485*117** 428G of the Act, with the exception of the requirements of 428G(b)(1) regarding delayed disbursement. Institutions of higher education participating in the Federal Direct Student Loan Program would not be required to delay the disbursement of student loan funds to first year students, unless the Secretary found it was necessary to protect the financial interests of the United States. The institution of higher education would also be required to provide to the Secretary timely and accurate information concerning: (1) the status of student borrowers (and students on whose behalf parents have a Federal Direct Student Loan Program loan), while students are attending the institution of higher education, and new information of which the institution of higher education becomes aware for these students (or their parents) after they leave the institution of higher education, for the Secretary's use in servicing and collecting Federal Direct Student Loan Program loans; and (2), if the institution of higher education is not a Federal Direct Student Loan Program loan originator, student eligibility and need for a Federal Direct Student Loan Program loan, as needed for alternative origination services for student and parent borrowers.

In estimating a student's need and eligibility, an institution of higher education would be required under the participation agreement to provide a statement that certifies the eligibility of a student to receive a Federal Direct Student Loan Program loan not in excess of the applicable maximum amount. The participation agreement would also authorize the institution of higher education, in exceptional circumstances specified in regulation by the Secretary, to refuse to certify a statement that permits a student to receive a Federal Direct Student Loan Program loan or to certify a loan amount that is less than the student's determination of need, if the reason for this action is documented and provided to the student. The "exceptional circumstances" provision is a change from the current Federal Family Education Loan provision, which does not set clear limits on the institution of higher education's discretion to refuse to certify a student's eligibility and which might harm deserving students.

Further, the participation agreement would provide that, for an academic year for which an institution of higher education has determined a student's need (under part F of title IV of the Act), a Federal Direct Supplemental Loans for Students loan (with terms similar to those under section 428A of the Act), or a Federal Direct PLUS loan (with terms similar to those under section 428B of the Act), or a loan obtained under a State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year. This provision, which is similar to a provision in the Federal Family Education Loan program, is designed to aid middle income borrowers by allowing them to borrow the amount of their expected family contribution.

Under the participation agreement set forth in section 454(a), the institution of higher education would also: (1) provide assurances that it will comply with the requirements specified by the Secretary relating to Federal Direct Student Loan

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Program loan information; (2) provide that it accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the participation agreement; (3) provide that its students and their ****486*118** parents will not be eligible to participate in the Federal Family Education Loan program for the period of time during which the institution of higher education participates in the Federal Direct Student Loan Program; (4) provide for the implementation of a quality assurance program, to ensure that the institution of higher education is complying with program requirements and meeting program objectives; (5) not charge fees (with the exception of the loan fee to the Secretary under section 456(c)) of any kind, however described, to student or parent borrowers for origination activities or for providing any other information needed for receiving a Federal Direct Student Loan Program loan; and (6) include other provisions that may be necessary to protect the interests of the United States and to promote the purposes of the Federal Direct Student Loan Program.

Most of these participation agreement requirements would provide for activities and potential liabilities with which institution participating in the Federal Family Education Loan program are already familiar. For example, it is expected that the Federal Direct Student Loan Program participation agreement would be standardized and would be similar to the current program participation agreements under section 487 of the Act for the current title IV programs. That agreement currently provides that the institution agrees that it is responsible for accounting, with appropriate documentation, for all the program funds it receives under that title and for returning to the Secretary any funds for which it cannot properly account.

Origination agreements

This section also sets forth, in section 454(b), requirements for origination agreements under the Federal Direct Student Loan Program. An origination agreement, which , like a participation agreement, would also be standardized, would supplement the participation agreement and include provisions with respect to the origination of loans by the institution of higher education that are similar to provisions described in that agreement. In addition, the origination agreement would provide that the institution of higher education will originate loans to eligible students and parents in accordance with Federal Direct Student Loan Program provisions and that the note or evidence of obligation on the loan would be the property of the Secretary.

In general, an institution of higher education's responsibilities under the Federal Direct Student Loan Program are likely to be simpler than an institution of higher education's current loan activities in the Federal Perkins Loan program, under which an institution of higher education services and collects loans, and maintains a revolving loan fund.

Withdrawal or termination

Finally, section 454(c) requires the Secretary to prescribe procedures by which institution may withdraw or be terminated from the Federal Direct Student Loan Program.

****487*119** Section 456

Section 456 provides new terms and conditions for Federal Direct Student Loan Program loans. In general, these terms and conditions are designed to provide borrowers with an assortment of loan repayment plans and to reduce interest rates for student borrowers, while maintaining an orderly transition from the guaranteed loan system.

Similarity with Federal Family Education Loan program loans

Section 456(a) provides that, unless otherwise specified, loans made to borrowers under the Federal Direct Student Loan Program would have the same terms, conditions, benefits and amounts as loans made to borrowers for Federal Stafford Loans (under section 428 of the Act), Federal Supplemental Loans for Students (under section 428A of the Act), and Federal PLUS Loans (under section 428B of the Act) and Federal Unsubsidized Stafford Loans (under section 428H of the Act). The Federal Direct Student Loan Program loans would be known respectively as Federal Direct Student Loans, Federal Direct Supplemental Loans for Students, Federal Direct PLUS Loans, and Federal Direct Unsubsidized Student Loans. Each of these direct loans would have, unless otherwise specified, the terms, conditions, benefits and amounts of its corresponding guaranteed loan under the Federal Family Education Loan program. Under the Federal Direct Student Loan Program, the

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Secretary also has the authority to consolidate loans, as provided in section 456(g).

Interest rates

Section 456(b) sets forth the interest rate provisions that would apply to Federal Direct Student Loan Program loans. This section makes inapplicable to Federal Direct Student Loan Program loans section 427(A) of the Act, which provides that a student loan borrower receives any subsequent student loans at the same interest rate as the first student loan the student borrowed (also known as "grandfathering"). This grandfathering provision is administratively burdensome and less appropriate when variable interest rates are used. Section 456(b) also provides that interest rates under the Federal Direct Student Loan Program would be calculated on a 12-month period beginning July 1 and ending June 30, to be determined for the loan program as a whole on the preceding June 1, using financial instruments auctioned at the final auction held prior to that June 1.

For Federal Direct Student Loans and Federal Direct Unsubsidized Student Loans made before July 1, 1997, the interest rate would be equal to the bond equivalent rate of 91-day Treasury bills plus 3.1 percent, with a cap (on the total amount of interest rate) at 9 percent. Federal Direct Supplemental Loans for Students made before July 1, 1997, would have an interest rate equal to the bond equivalent rate of 52-week Treasury bills plus 3.1 percent, with a cap at 11 percent. Federal Direct PLUS Loans made before July 1, 1997, would have an interest rate equal to the bond equivalent rate of 52-week Treasury bills plus 3.1 percent, with a cap at 10 percent.

****488*120** The interest rate for loans made under these programs on or after July 1, 1997, would be the bond equivalent rate of the security with a comparable maturity (using the national average for each type of Federal Direct Student Loan Program loans), plus a certain percentage, with a cap. The cap on interest rates for each type of Federal Direct Student Loan Program loan would be the same for borrowers before and after July 1, 1997. For Federal Direct Student Loans and Federal Direct Unsubsidized Student Loans, the additional percentage would be 1 percent, with a cap at 9 percent. For Federal Direct Supplemental Loans for Students, this additional percentage would be 1.5 percent, with a cap at 11 percent. Federal PLUS Loans would have an additional percentage of 2.1 percent, with a cap at 10 percent.

Under the Federal Credit Reform Act of 1990, the cost of all Federal credit programs is estimated on a net present value basis, using as a discount rate the Federal cost of borrowing for a security with comparable maturity to the loans in the applicable program. The interest rate provision for Federal Direct Student Loan Program loans made on or after July 1, 1997, would link the rate charged to borrowers to the Federal discount rate, thus ensuring that there would not be artificial savings or cost estimates generated by changes in interest rates.

These interest rate provisions, for loans made both before and after July 1, 1997, are less complex than those in section 427A of the Act for the current Federal Family Education Loan program. In addition, it is expected that, under current economic assumptions, the provision setting interest rates for loans made on or after July 1, 1997, will result in an interest rate that would be lower, by approximately one-half of one percentage point, for all new Federal Direct Student Loan Program student loans, thus generating savings for student borrowers under the new program.

Loan fee

Section 456(c) provides that the Secretary shall charge the borrower of a Federal Direct Student Loan Program loan a fee equal to 5 percent of the principal amount of the loan during the phase-in. For academic years 1997–98 and in succeeding academic years, the loan fee will be 3.65 percent. Currently, 5 percent is the origination fee charged to borrowers under the Federal Family Education Loan program. However, 6.5 percent is the approximate national average for the total fees that students pay when adding guaranty agency insurance premiums plus origination fees under that program.

Repayment plans

Section 456(d) requires the Secretary to offer a variety of plans for repayment of Federal Direct Student Loan Program loans.

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Under these provisions, the eligible student borrower would be able to choose from four different types of repayment plans the plan that best addresses the borrower's needs. These repayment plans would be: (1) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time; (2) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, provided that the borrower annually repays ****489*121** a minimum amount determined by the Secretary; (3) a graduated repayment plan, with annual repayment amounts established at two or more graduated levels paid over a fixed or extended period of time (provided that any of the borrower's scheduled payments are not less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan); (4) an income contingent repayment plan, to be known as an "EXCEL ACCOUNT" with varying annual repayment amounts based on the income of the borrower, paid over a period of time not to exceed a maximum length as determined by the Secretary. Eligible parent borrowers would be able to choose from among standard repayment, graduated repayment, and extended repayment plans.

Since, unless otherwise noted, the terms and conditions of Federal Direct Student Loan Program loans would be the same as those under the Federal Family Education Loan program, the standard repayment plan for a Federal Direct Student Loan Program loan would contain several repayment features that are the same as those under the Federal Family Education Loan program. For example, a fixed repayment period under the Federal Direct Student Loan Program would be 10 years (excluding periods of deferment or forbearance) as in the Federal Family Education Loan program. The extended repayment plan is intended to accommodate borrowers who prefer to make payments that are unchanged over a repayment period of moderate length, for example, 15 years. The graduated repayment plan is designed to ensure that borrowers may increase their payments while their income rises, but are not faced with a "balloon" payment at the end of their loan period that they would be unable to afford. The graduated repayment plan could extend over a moderately lengthy period as well, for example, 15 years.

The EXCEL Account is intended to accommodate borrowers whose income after graduation from an institution of higher education is low, and thus would be attractive to borrowers who plan to enter lower-paying community service jobs. Individual payments under an income contingent repayment plan could be quite small, and borrowers would be able to stretch out repayment over a very lengthy period, for example, 40 years. It is expected that the period of repayment on an income contingent loan would not extend for the borrower beyond age 65.

In addition, section 456(d) provides that if a borrower of a Federal Direct Student Loan Program loan does not select a repayment plan, the Secretary may provide the borrower with the standard repayment plan, graduated repayment plan, or extended repayment plan. Since an EXCEL Account would involve disclosure by the Internal Revenue Service of the borrower's income information, it would be more appropriate for a borrower (whose loan has not been in default and assigned to the Secretary) to choose this repayment plan instead of having it chosen for him or her by the Secretary.

The borrower of a Federal Direct Student Loan Program loan may also change his or her selection of a repayment plan, or the Secretary's selection of a ***122** plan for the borrower, as the case may be, under terms and conditions established by the Secretary. Further, the Secretary is authorized to provide an alternative repayment ****490** plan to a borrower of a Federal Direct Student Loan Program who demonstrates to the satisfaction of the Secretary that the terms and conditions of the four other types of repayment plans are not adequate to accommodate the borrower's exceptional circumstances, as long as this plan does not increase the cost of the program. The Secretary is also authorized to require a borrower who has defaulted on a Federal Direct Student Loan Program loan to repay all reasonable collection costs associated with that loan and to repay the loan under an EXCEL Account.

Section 456(d) authorizes the Secretary to obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a Federal Direct Student Loan Program loan that is, or may be, subject to an EXCEL Account plan for the purpose of determining the amount of the borrower's annual repayment obligation. The Secretary is required to establish procedures to effectively implement this repayment plan, including procedures for determining the borrower's repayment obligation.

Further, section 456(d) authorizes the Secretary to obtain income information from the borrower, or the borrower and his or her spouse, if applicable, if the Federal Direct Student Loan Program were part of an EXCEL Account. The Secretary is required to establish procedures for determining the borrower's repayment obligation under this plan, and any other procedures necessary to implement an EXCEL Account.

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An EXCEL Account schedule for a Federal Direct Student Loan Program loan would be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code) of the borrower, or, if the borrower is married and files income tax information jointly with his or her spouse, on the adjusted gross income of both partners. It would be unlikely, given the financial disincentives for married couples to file separate returns, that a married borrower with little or no income would file separately in order to take advantage of a more favorable repayment schedule on his or her Federal Direct Student Loan Program loan. A borrower who chooses to, or is required to, repay a Federal Direct Student Loan Program loan through an EXCEL Account and whose adjusted gross income is unavailable or does not reasonably reflect his or her current income, would be required to provide to the Secretary other documentation of income, which may be used to determine an appropriate repayment schedule.

The Secretary is required to establish an EXCEL Account repayment schedule for a Federal Direct Student Loan Program loan through regulations, and to require payments measured as a percentage of the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable), as determined by the Secretary.

Finally, section 456(d) requires that the balance due on an income contingent Federal Direct Student Loan Program loan equals the unpaid principal amount of the loan, as well as any accrued interest and any fees, such as late charges. The Secretary may limit by regulation the amount of interest that may be capitalized on the loan and the timing of that capitalization; this provision is designed to prevent capitalization that would be burdensome to a borrower, ****491*123** for example, if the interest on the loan were substantially greater than the outstanding principal.

Further, the Secretary is required to establish procedures under which the borrower of a Federal Direct Student Loan Program loan who will be using an EXCEL Account will be notified of the terms and conditions of the repayment plan, including notification that: (1) the Internal Revenue Service will disclose to the Secretary the most recent available information concerning the borrower's income; and (2) if a borrower considers that special circumstances, such as loss of employment by the borrower or his or her spouse, would warrant an adjustment in the borrower's loan repayment level, the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with established criteria.

Deferment

Section 456(e) provides that a borrower of a Federal Direct Student Loan Program loan who is eligible for a deferment would not be required to pay periodic installments of principal during the period of deferment. Borrowers under the Federal Direct Student Loan Program would be entitled to the same deferment terms as new borrowers (after July 1, 1993) under the Federal Family Education Loan program. Interest would not accrue during a deferment on a Federal Direct Student Loan, or a Federal Direct Consolidation Loan that consolidated only subsidized Federal Direct Student Loan Program or Federal Family Education Loan program loans (Federal Direct Student Loans and subsidized Federal Stafford Loans). Interest would accrue and be capitalized, or paid by the borrower, in the case of a Federal Direct Supplemental Loan for Students loan, a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Student Loan, or a Federal Direct Consolidation Loan that consolidated one or more loans that were not subsidized.

A borrower would be eligible for a deferment during any period in which the borrower was pursuing at least a half-time course of study at an eligible institution of higher education, or pursuing a course of study under a graduate fellowship program approved by the Secretary, or a rehabilitation training program, approved by the Secretary, for individuals with disabilities. The borrower would also be eligible for a deferment during a period of not more than three years during which time the borrower (1) is seeking and unable to find full-time employment, or (2) has experienced or will experience an economic hardship, as determined by the Secretary in accordance with regulations for section 435(o) of the Act. However, a borrower would not be eligible for a deferment, or for a Federal Direct Student Loan Program loan other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan, while serving a medical internship or residency program.

Consolidation

Section 456(g) provides that a borrower of a Federal Direct Student Loan Program loan may consolidate the loan, under terms and conditions established by the Secretary, with Federal Stafford Loans (subsidized and unsubsidized), Federal

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Supplemental Loans for Students loans, and Federal Perkins Loans made under the Act, ****492*124** as well as Health Professional Student Loans made under Title VII, part C–II, of the Public Health Service Act. If a borrower has at least one Federal Direct Student Loan Program loan, his or her loans made under either the Federal Family Education Loan program or the Federal Direct Student Loan Program could, at the borrower's option, be consolidated into a Federal Direct Consolidation Loan, which would have many of the same terms and conditions as Federal Consolidation Loans under section 428C of the Act. However, a loan made under the Federal Direct Student Loan Program could not be consolidated under section 428C of the Act.

Borrower defenses

Section 456(h) requires the Secretary, notwithstanding any other provision of State or Federal law, to specify in regulations (except as authorized under section 459(a)) which acts or omissions of an institution of higher education may be asserted by a borrower as a defense to repayment of a loan made under the Federal Direct Student Loan Program, except that in no event would a borrower recover an amount from the Secretary in an action arising from or relating to a Federal Direct Student Loan Program loan that would be more than the amount the borrower had repaid on the loan.

Federal Direct Student Loan Program records

Section 456(i) provides that records maintained in accordance with section 484A(c) of the Act may be used in any proceeding, as permitted by section 484A(c) of the Act, with respect to a Federal Direct Student Loan Program loan. This allows for the use of optically imaged documents in any proceedings involving Federal Direct Student Loan Program loans.

Bankruptcy

Finally, section 456(j) provides that, notwithstanding any other provision of law, a Federal Direct Student Loan Program loan is not dischargeable in bankruptcy. The broad spectrum of repayment plans available to a Federal Direct Student Loan Program borrower would provide ample flexibility to manage this debt, thus obviating the need to turn to bankruptcy courts for financial relief.

Section 456. Contracts

Section 456 amends the loan collection and procurement contract authority in section 457 to reflect the expansion of the demonstration program into the Federal Direct Student Loan Program. This section allows the Secretary to provide for services and supplies for the Federal Direct Student Loan Program through one or more contracts. The entities with which the Secretary may award contracts would include, but not be limited to, agencies, such as guaranty agencies, with which the Secretary has agreements under section 428(b) and 428(c) of the Act. However, these agencies must be otherwise qualified and comply with the procedures applicable to the award of the contract.

This section also provides that the Secretary may, through June 30, 1998, award contracts without regard to the requirements in 41 U.S.C. 253, 41 U.S.C. 416, and 15 U.S.C. 637(e), and the corresponding requirements of the Federal Acquisition Regulations. ****493*125** These requirements concern competition procedures, procurement notices, and notices of solicitation. However, this exemption authority would be limited to a case-by-case determination that an exemption would be in the public interest and would be necessary for the orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program. Moreover, the exemption authority would not be applicable on or after July 1, 1998.

The Secretary is authorized to enter into one or more contracts for: (1) the alternative origination of loans to students attending institutions with Federal Direct Student Loan Program participation agreements (or origination agreements); (2) the servicing and collection of Federal Direct Student Loan Program loans; (3) the establishment and operation of one or more data systems for the maintenance of records on all Federal Direct Student Loan Program loans; (4) services to assist in the orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program; and (5) such other aspects of the Federal Direct Student Loan Program as the Secretary determines are necessary to ensure its

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successful operation.

The contract authorities under this section give the Secretary the administrative flexibility necessary under the expected transition schedule to ensure loan access prior to full implementation of the Federal Direct Student Loan Program. Where feasible during this period, the Secretary expects to utilize the competitive process when awarding contracts for Federal Direct Student Loan Program services.

Section 457. Reports and evaluations

Section 457(a) retains the requirement in current law that the Secretary transmit to the Congress, not later than July 1, 1993 and each July 1 for the five succeeding years, an annual report on the status of the program under part D of title IV of the Act. Since this report would concern the phase in of the Federal Direct Student Loan Program rather than the operation of a demonstration program, other provisions relating to interim reports, control groups, and treatment of costs are removed.

Section 457(b) requires additional evaluations of the Federal Direct Student Loan Program. This provision authorizes the Secretary to use a portion of funding for the Federal Direct Student Loan Program for research on, or demonstration or evaluation of, any aspects of the Federal Direct Student Loan Program, including flexible repayment plans.

Section 458. Regulations

Section 458 sets forth the Secretary's regulatory activities. In accordance with the expected transition schedule from the Federal Family Education Loan program to the Federal Direct Student Loan Program noted above and the need to develop mechanisms for direct lending and income contingent repayment of student loans as expeditiously as possible, this section requires the Secretary to publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary determines are reasonable and necessary for the successful ****494*126** implementation of the first year of the Federal Direct Student Loan Program.

This section also provides that the rulemaking requirements under section 431 of the General Education Provisions Act would not apply with regard to publication of these first-year, but only these first-year, standards, criteria, and procedures. Finally, section 458 makes conforming amendments to other provisions concerning the Secretary's regulatory activities under section 458, and removes the requirement that the Secretary award procurement contracts not later than February l, 1994, since these provisions would be incompatible with the expansion and transition to the Federal Direct Student Loan Program.

Section 459. Expenditure authority

Section 459 amends the mandatory expenditure authority to provide for the expanded program. This section provides that the following funds would be available to the Secretary to be obligated for administrative costs of the Federal Direct Student Loan Program, including the costs of the transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program and transition support for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans: not to exceed $261,000,000 in fiscal year 1994; not to exceed $346,000,000 in fiscal year 1995; not to exceed $552,000,000 in fiscal year 1996; not to exceed $596,000,000 in fiscal year 1997; and not to exceed $749,000,000 in fiscal year 1998.

Section 459 also provides that, if in any fiscal year, the Secretary determines that additional funds for administrative expenses are needed as a result of the transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program, or the expansion of the Federal Direct Student Loan Program, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for these expenses. The Secretary is authorized to carry over funds to any subsequent fiscal year.

Chapter II–Conforming Amendments

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Section 4021. Loan access

Section 4021 makes several changes to the Federal Family Education Loan program to provide the Secretary, as noted in section 4021(a), with the flexible authority needed in order to preserve access to student and parent loans under the Federal Family Education Loan program during the transition from that program to the Federal Direct Student Loan Program.

Section 4021(b) adds to the lender-of-last-resort provision in section 428(j) of the Act a new authority for the Secretary, in order to ensure availability of loan capital during the transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program, to provide a guaranty agency with additional advance funds in accordance with the emergency advances provision under section 422(c)(7) of the Act. This advance would be made with restrictions on the use of these funds, as determined appropriate by the Secretary, in order to ensure that the guaranty agency would make loans as the lender-of-last-resort. The guaranty ****495*127** agency would be required to make loans in accordance with the provisions of section 428(j) of the Act and the requirements of the Secretary.

Section 4021(b) also provides that, as a lender-of-last-resort and notwithstanding any other provision of part B of title IV of the Act, the guaranty agency would be paid a fee, in lieu of interest and special allowance subsidies, for making these loans and would be required to assign these loans to the Secretary on demand (in return for which the portion of the advance represented by the loans shall be considered repaid by the guaranty agency). Finally, section 4021(b) makes conforming amendments to the emergency advances provision under section 422(c)(7) of the Act.

Section 4021(c) amends the lender referral services provisions in section 428(e) of the Act. This section authorizes the Secretary to enter into agreements with guaranty agencies that meet standards established by the Secretary to provide lender referral services in geographic areas specified by the Secretary. The agencies would be paid under the terms provided in section 428(e)(3) of the Act for these services. In addition, the Secretary is required to publish in the Federal Register whatever standards, criteria, and procedures, consistent with the Federal Family Education Loan program and the Federal Direct Student Loan Program, the Secretary determines are reasonable and necessary to provide lender referral services and to ensure loan access to student and parent borrowers during the transition period. Section 431 of the General Education Provisions Act, concerning rulemaking, would not apply to publication of these standards, criteria, and procedures.

Section 211(c) also modifies the geographic criteria under which students would be able to receive lender referral services, consistent with the other amendments to this provision. Finally, section 4021(c) removes the specific authorization of appropriations for lender referral services payments, but retains the payment formula in current law. Funds for these payments are part of the transition funds available under section 459.

Section 4021(d) amends the lender-of-last-resort provision for Sallie Mae under section 439(q) of the Act. This section requires (rather than permits, as in current law) Sallie Mae or its designated agent to begin making Federal Family Education Loan program loans as the lender-of-last-resort, subject to the limitations in section 428(j)(3) of the Act, whenever the Secretary determines that eligible borrowers are unable to obtain these loans and requests Sallie Mae to do so. Section 428(j)(3) of the Act provides that a guaranty agency or lender is not required to make loans to an institution of higher education that has a high default rate, has not participated in the Federal Family Education Loan program for the past 18 months, or is subject to an emergency action or limitation, suspension, or termination proceeding. Sallie Mae or its designated agent would be required to stop making lender-of-last-resort loans when the conditions that caused the exercise of this loan-making authority have ceased to exist.

Section 4022. Preservation of guaranty agency assets

Section 4022 clarifies the longstanding and judicially supported view that the guaranty agency's assets are dedicated to the loan ****496*128** programs and may not be used for unauthorized purposes. This authority allows the Secretary to ensure that program assets are used to operate the loan program in the most efficient way possible, consistent with an orderly transition to the Federal Direct Student Loan Program.

Thus, this section adds to the guaranty agency reserves provisions in section 422 of the Act a clarification that, notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and assets purchased with these reserve funds, regardless of who holds or controls the reserves or assets, are the property of the United States, to be used in

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the operation of the Federal Family Education Loan program or the Federal Direct Student Loan Program. These reserves would be required to be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary. The Secretary is prohibited from requiring the return of all of a guaranty agency's reserve funds unless the Secretary determines that the return of these funds were essential to the operation of the Federal Family Education Loan program or the Federal Direct Student Loan Program, or to ensure the orderly termination of the guaranty agency's operations and the liquidation of its assets. However, the Secretary is also authorized to direct a guaranty agency to: (1) return to the Secretary all or a portion of its reserve fund that the Secretary determines is not needed to pay for the agency's program expenses and contingent liabilities; and (2) require the return to the Secretary or the guaranty agency of any funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency, or which are required for the orderly termination of the agency's operation and liquidation of its assets.

This section also provides that, in order to ensure preservation of a guaranty agency's funds and assets, any contract that concerns the administration of any guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the agency's reserve funds, and that is entered into or extended by the guaranty agency (or any other party on behalf of, or with the concurrence of, the guaranty agency) after the effective date of this provision is required to include a provision that the contract is terminable by the Secretary. This termination provision could be implemented by the Secretary upon 30 days notice to the contracting parties if the Secretary determined that the contract included an impermissible transfer of reserve funds or assets, or was otherwise inconsistent with the terms or purposes of section 422 of the act.

Section 4023. Modification of Federal Family Education Loan program loans terms

Section 4023 amends the terms of loans under the Federal Family Education Loan program in section 428 of the Act. This section requires that an insurance program agreement provide for income contingent repayment following a borrower's default, and authorizes the Secretary to require any borrower who has defaulted on a loan made under the Federal Family Education Loan program and whose loan is assigned to the Secretary to repay that loan under an income contingent repayment plan, the terms and conditions of ****497*129** which would be established by the Secretary and would be the same as or similar to the EXCEL Account established for purposes of the Federal Direct Student Loan Program.

Section 4024. Loan assignment

Section 4024 amends section 428(c)(8) of the Act, concerning assignment of loans from guaranty agencies to the Secretary when it is in the Federal interest to do so. This section removes provisions that would no longer be appropriate, given the expansion of the direct lending program. It also adds a provision stating that an orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program shall be deemed to be in the Federal financial interest, and a requirement that a guaranty agency promptly assign loans to the Secretary, if deemed by the Secretary to be necessary to protect the Federal financial interest, upon the Secretary's request.

Section 4025. Guaranty agency functions

Section 4025 makes changes to section 428(c)(10) of the Act, regarding guaranty agency reserves, in conformance with the transition to the Federal Direct Student Loan Program. Section 4025(1) removes the requirement that the Secretary must require a guaranty agency that has low reserves or is financially or administratively impaired to submit an 18-month management plan to the Secretary before the Secretary takes other steps concerning that agency. The Secretary would require a management plan only as appropriate, consistent with the transitional nature of the Federal Family Education Loan program.

Section 4025(2) also allows modification of a guaranty agency's management plan in conformity with the transition to the Federal Direct Student Loan Program. This section provides that, if the Secretary is seeking to terminate the guaranty agency agreement or assume the agency's functions, the agency's management plan would include the means by which the agency and the Secretary will work together to ensure an orderly termination of operations and liquidation of the agency's assets.

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Section 4025(3) gives the Secretary increased flexibility to terminate a guaranty agency's agreement by allowing the Secretary to terminate the agreement if the Secretary determines that termination is necessary to protect the Federal financial interest, to ensure the continued availability of loans to student or parent borrowers, or to ensure an orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program.

Section 4025(4) expands the Secretary's authorized functions when a guaranty agency's agreement is terminated. The Secretary is authorized to provide the guaranty agency with additional advance funds in accordance with section 422(c)(7) of the Act, with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to meet the immediate cash needs of the guaranty agency, ensure the uninterrupted payment of claims, or ensure that the guaranty agency will make loans as the lender-of-last-resort. This section also authorizes the Secretary to use all funds and assets of the guaranty agency to assist in the activities ****498*130** undertaken in accordance with termination of the guaranty agency agreement and to take appropriate action to require the return to the guaranty agency or the Secretary of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization. Finally, this section authorizes the Secretary to take whatever other action is necessary to ensure an orderly transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program.

Section 4025(5) removes subparagraph (G) of section 428(c)(10) of the Act, which currently prevents the Secretary from terminating the agreement of any guaranty agency that is backed by the full faith and credit of the State where that agency is the primary guarantor. At most only two guaranty agencies are currently considered to be backed by the full faith and credit of a Sate. This provision in current law, would impede efforts to "wind down" the Federal Family Education Loan program.

Section 4025(6) makes conforming amendments to the structure of section 428(c)(10) of the Act.

Section 4025(7) provides additional authorities needed by the Secretary to ensure an orderly termination of the Federal Family Education Loan program. If the Secretary has terminated or is seeking to terminate a guaranty agency's agreement, or has assumed a guaranty agency's functions, this section provides that, notwithstanding any other provision of law: (1) the guaranty agency may not file for bankruptcy; (2) no State court may issue an order affecting the Secretary's actions with respect to that guaranty agency; and (3) no provision of State law shall apply to the actions of the Secretary in terminating the operations of the guaranty agency.

This section also provides that, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement, or has assumed a guaranty agency's functions, and notwithstanding any other provision of law, any contract that concerns the administration of any guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the agency's reserve funds, and that is entered into or extended by the guaranty agency (or any other party on behalf of, or with the concurrence of, the guaranty agency) after the effective date of this provision is required to include a provision that the contract is terminable by the Secretary. This termination provision could be implemented by the Secretary upon 30 days notice to the contracting parties if the Secretary determined that the contract included an impermissible transfer of reserve funds or assets, or was otherwise inconsistent with the terms or purposes of section 428 of the Act. Finally, notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency, the functions of which the Secretary has assumed, could not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs.

Section 4025(8) makes a conforming amendment to a reporting requirement, consistent with the transition to the Federal Direct Student Loan Program.

****499*131** Section 4026

Section 4026 revises section 428(f)(1) of the Act concerning payments based on insurance program agreements, to retain a specific administrative cost allowance to guaranty agencies only through fiscal year 1993. This change is consistent with the inclusion of transition support funds in section 459 which the Secretary would use to provide to guaranty agencies to encourage them to continue their operations and to effectively manage their portfolios.

Section 4027. Loan consolidation

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Section 4027 amends the provisions for the Federal consolidation loan program under section 428C of the Act, in order to facilitate the expansion of the Federal Direct Student Loan Program. Section 4027(1) defines "eligible borrower" for loan consolidation in the Federal Family Education Loan program to mean a borrower who, at the time of application for a consolidation loan, is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.

Section 4027(2) amends the terms of the consolidation loan agreement to require a lender to offer income sensitive repayment terms for a consolidation loan made on or after July 1, 1994. In the event that a borrower is unable to obtain a consolidation loan with income sensitive repayment terms acceptable to the borrower from the holder of the borrower's outstanding loans (that are selected for consolidation), or from any other lender, including Sallie Mae, this section authorizes the Secretary to offer the borrower a direct consolidation loan with EXCEL Account terms under the Federal Direct Student Loan Program. During the transition period, the Secretary expects to make these loans to the fullest extent possible, consistent with the Department's capacity to originate and service these loans.

This section makes a technical amendment to the deferment provisions of consolidated loans under the Federal Family Education Loan program, in order to make this provision administratively feasible. As with the proposal for loans consolidated into the Federal Direct Student Loan Program, interest would accrue and be capitalized or, be paid by the borrower, on loans on which interest is not federally subsidized; interest would accrue, and be paid by the Secretary on loans on which interest is federally subsidized.

Section 4027(3) provides that a consolidation loan made before July 1, 1994, will bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent, or 9 percent. A consolidation loan made on or after July 1, 1994, would bear interest an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

Section 4027(3) makes additional changes to the Federal consolidation loan requirements consistent with offering repayment options to borrowers based in their income. This section adds to the repayment schedules in current law a provision that, if the sum of consolidation loan and the amount outstanding on other student ****500*132** loans is less than $7,500 the consolidation loan would be required to be repaid in not more than 10 years. This provision is consistent with removal of the minimum loan amount under section 428C of the Act, and allows for a standards Federal Family Education Loan repayment period. During the transition from the Federal Family Education Loan program to the Federal Direct Student Loan Program, lenders under the Federal Family Education Loan program would be required to offer income sensitive repayment on a consolidated loan, while the Secretary would offer repayment terms pursuant to an EXCEL Account on a loan assigned to the Secretary.

Section 4028. Sallie Mae

Section 4028 adds a provision to section 439 of the Act, concerning Sallie Mae. This provision requires the Secretaries of Education and the Treasury to prepare a study that examines alternatives concerning the status, operations, and Federal Family Education Loan program to the Federal Direct Student Loan Program.

The study is required to be completed within six months of the enactment of this section and to be considered by the Secretaries of Education and the Treasury in developing relevant legislative proposals. In addition, the study would consider how best to meet the needs of students and taxpayers, as well as appropriate changes to part D of title VII of the Act relating to the College Construction Loan Association. The study is also required to reflect the need for Sallie Mae to maintain liquidity and perform other functions for the Federal Direct Student Loan Program, including additional duties as specified by the two Secretaries.

Section 4029. Optically imaged documents

Section 4029(a) amends section 484A of the Act to provide for the use of optically imaged documents in certain proceedings. This section describes the purpose of this provision, to be to: (1) allow the Secretary to use records, including promissory

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notes and repayment agreements, required for the administration of the Federal Direct Student Loan Program, or for the administration of loans made under the Federal Family Education Loan program that have been assigned to the Secretary; (2) permit the Secretary to destroy originals of these documents and records, including promissory notes and repayment agreements, after they have been optically imaged, thereby achieving significant savings in storage and retrieval costs; and (3) ensure that the Secretary may introduce as evidence in any proceeding with respect to these programs or loans optically imaged documents and records, including promissory notes and repayment agreements.

This section also provides that, notwithstanding any other provision of Federal or State law, an optically imaged copy of any document or record, including a promissory note or repayment agreement, may be introduced as evidence in any proceeding with respect to these programs or loans in any Federal or State court, or other tribunal, and this optically imaged copy would be admissible in any court or tribunal of the United States or any State as if it were the original document or record and have the same force and effect as the original. However, this provision does not preclude the admissibility of a duplicate of a document or record required for the ****501*133** administration of these programs or loans made by a technology other than optical imaging. Further, this provision does not preclude the admissibility of an optically imaged copy of any document or record in a proceeding outside the scope of section 484(A)(c) of the Act.

Section 4029(b) amends section 432 of the Act to provide that records maintained in accordance with section 484A(c) of the Act may be used in any proceeding, as permitted by section 484A(c) of the Act, with respect to a loan that was made under the Federal Family Education Loan program and assigned to the Secretary. This would allow the Department to use optically imaged documents as evidentiary material in certain proceedings with respect to these loans. This authority would be consistent with the authority for allowing as evidentiary material in certain proceedings imaged documents with respect to Federal Direct Student Loan Program loans.

Section 4029(c) amends section 487 of the Act, concerning program participation agreements, to provide that optically imaged documents may be used in any proceeding with respect to a Federal Direct Student Loan Program or Federal Family Education Loan program loan that has been assigned to the Secretary, as provided in section 484A of the Act, in accordance with applicable provisions of the Federal Rules of Evidence and 28 U.S.C. 1732.

Section 4030. Sequestration

Section 4030 adds to section 256(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, which concerns the effects of a sequestration order on the current guaranteed student loan program, a new provision concerning the effects of a sequestration order on the Federal Direct Student Loan Program. Under this provision, any reductions that are required to be achieved from the Federal Direct Student Loan program as a consequence of an order under section 254 of that Act would be required to be achieved only as follows: for any Federal Direct Student Loan Program loans made during the period beginning on the date that the order took effect with respect to a fiscal year and ending at the close of that fiscal year, the loan fee authorized to be collected under section 456(c) of the Higher Education Act would be required to be increased by 0.50 percent. In addition, this section makes a conforming amendment to section 252(c)(1)(B) and to the heading for section 256(b) of that Act.

Section 4031. Effective dates

Section 4032 sets out the effective dates for the amendments made by the Committee recommendation.

Section 4032. Education/Treasury study

Section 4032 requires the Secretary of Education, in consultation with the Secretary of Treasury, to conduct a study to be sent to the Congress, along with any legislative recommendations that the Secretary may have, by no later than six months after the enactment of this provision, of the feasibility of Federal Direct Student Loan Program loan repayment through wage withholding by the Internal ****502*134** Revenue Service and the feasibility of several other repayment options for Federal Direct Student Loan Program loans.

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Section 4033. IRS collections

Section 4033 expresses the sense of the Committee on Education and Labor that the House should consider and adopt legislation providing for the collection of student loans using the Internal Revenue Service of the Department of the Treasury.

SUBTITLE B–COST SHARING BY STATES

Section 4101. Cost-sharing by States

Section 4101 amends section 428 of the Act to add a requirement that the State share financial responsibility for a portion of the default costs above a certain level at institutions located in that State. If, based upon the latest available data, the cohort default rate for borrowers that attend institutions of higher education located in a particular State exceeds 20 percent, the State would be required to pay to the Secretary a portion of the amount by which the default rate exceeds 20 percent. The portion of the percentage used would be phased in over several fiscal years: in fiscal year 1995, the amount would be one-eighth of the percentage over 20 percent; in fiscal year 1996, it would be one-fifth of the percentage over 20 percent; and in fiscal year 1997 and beyond, it would be one-half of the percentage over 20 percent. The State would be authorized to charge a fee to participating institutions in the State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's costs. The fee structure would also provide an exemption from fees for institutions that experienced certain types of exceptional mitigating circumstances, specified by the State and approved by the Secretary, and those circumstances contributed to the institution's cohort default rate.

SUBTITLE C–ERISA AMENDMENTS RELATING TO GROUP HEALTH PLANS

Section 4201

Coordination of ERISA Preemption Rules with Title XIX Provisions Providing for Liability of Third Parties.

This section amends section 514(b)(8) of ERISA to exempt from preemption certain additional provisions of State laws. In 1986, ERISA was amended to add subsection (b)(8) in order to facilitate the ability of the States to assure that Medicaid was the secondary payor for all eligible individuals also covered under group health plans. Under the amendments to Title XIX of the Social Security Act contained in the Committee on Energy and Commerce's title of this bill, additional requirements relating to third-party payors are imposed on the States as a condition for receiving Federal matching Medicaid funds. The amendments to ERISA under Section 4201 permit States to enforce laws enacted as a result of these additional Medicaid requirements.

****503*135** Section 4202

Continued Coverage of Costs of a Pediatric Vaccine Under Group Health Plans.

This section precludes group health plans from reducing their coverage of the costs of pediatric vaccines below the level in effect on May 1, 1993. This is a corresponding amendment to a requirement included in the title of this bill reported by the Committee on Energy and Commerce.

Section 4203

Temporary Rules Governing Preemption of Certain State Laws.

Section 4203 amends section 514 (b) of ERISA to provide 2-year exemptions from preemption for certain provisions of State law, as follows:

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(1) the Hawaii Prepaid Health Care Act;

(2) subtitle 2 of title 19 of the Annotated Code of Maryland, which establishes the Health Services Cost Review Commission and authorizes an all-payer hospital rate setting system;

(3) section 295.52 of the Minnesota Statutes (relating to the 2% gross receipts tax on providers), section 19 of Article 9 of the Minnesota Health Right Act (permitting providers to pass through the above tax), and other specified sections of such Act (relating to data collection); and

(4) specified sections of the New York Public Health Law relating to the all-payer hospital rate setting system, the 13% surcharge, uniform hospital charges, the variable surcharge for HMOs, and the allowances for bad debt, charity care, health services, financially distressed hospitals, and excessive malpractice insurance.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(B) and (C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to the filing of this report, is set forth as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. William D. Ford,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for the Reconciliation recommendations of the Committee on Education and Labor, as ordered transmitted to the House Committee on the Budget, May 12, 1993.

The estimates included in the attached table represent the 1994–1998 effects on the federal budget and on the budget resolution baseline of the Committee's legislative proposals affecting spending. CBO understands that the Committee on the Budget will be responsible for interpreting how savings contained in these legislative ****504*136** proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Kalcevic and Jean Hearne, who can be reached at 226–2820.

Sincerely,

James L. Blum
(For Robert D. Reischauer).

Enclosure.

COST ESTIMATE OF THE HOUSE EDUCATION AND LABOR COMMITTEE

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Estimated costs to State and local governments

Direct student loans: None.

State school default fee: Beginning in fiscal year 1995, state governments would be required to pay an annual fee. The fee would be a function of the number of schools in the state with cohort default rates in excess of 20 percent. The five-year federal outlay savings of $300 million will come directly from state governments.

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ERISA: The federal government pays an average of 57 percent of the cost of current law Medicaid services. State and local governments fund the remaining 43 percent. State and local savings to Medicaid programs would be $30 million in fiscal year 1995 and would increase to $45 million by fiscal year 1998.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 18, 1993.

Hon. William D. Ford,
Chairman, Committee On Education and Labor, U.S. House of Representatives, Washington, DC.
Dear Mr. Chairman: On Friday, May 14, 1993, the Congressional Budget Office provided the Committee on Education and Labor with a cost estimate of its reconciliation recommendations. Your staff inquired as to why no effects were shown for Section ****505*137** 4202–Continued Coverage of Costs of a Pediatric Vaccine under Group Health Plans.

This section, by itself, would have no budgetary effects relative to the CBO baseline that has been used to measure the costs or savings of the Committee's action. For this reason, no cost or savings for this provision was shown in the CBO estimate.

On the other hand, requiring group health plans to continue coverage of pediatric vaccines would limit the costs of a new federal immunization program contained in the reconciliation recommendations of the Energy and Commerce Committee. The estimate CBO provided to the Energy and Commerce Committee for the costs of the new immunization program assumed current health plans could not drop coverage of vaccines because that committee included a provision similar to Section 4202.

We would be glad to respond to any additional questions you might have on this issue. The CBO staff contact is Charles Seagrave (226–2820).

Sincerely,

Robert D. Reischauer.

COMMITTEE ESTIMATE

With reference to the statement required by clause 7(a)(1) of rule XIII of the Rules of the House of Representatives, the Committee accepts the estimate prepared by the Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the rules of the House of Representatives, the Committee estimates that the enactment of the Committee's reconciliation recommendations will have no inflationary impact on the prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the Federal is negligible.

OVERSIGHT FINDINGS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee's oversight findings are set forth above. No additional oversight findings are applicable at this time.

OVERSIGHT FINDING AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(l)(3)(D) of rule XI of the rules of the House of Representatives, the Committee states that no findings or recommendations of the Committee on Government Operations were submitted to the Committee.

CHANGES IN EXISTING LAW MADE BY TITLE IV OF THE BILL, AS REPORTED

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In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, ***138** are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE IV–STUDENT ASSISTANCE

* * * * * * *

PART B–FEDERAL FAMILY EDUCATION LOAN PROGRAM

* * * * * * *

ADVANCES FOR RESERVE FUNDS OF STATE AND NONPROFIT PRIVATE LOAN INSURANCE PROGRAMS

Sec. 422. (a)***

* * * * * * *

(c) Advances for Insurance Obligations.–

(1)***

* * * * * * *

(7) Emergency advances.–The Secretary is authorized to make advances, on terms and conditions satisfactory to the Secretary, [to a guaranty agency in accordance with section 428(c)(10)(F)(v) in order to assist the agency in meeting its immediate cash needs and ensure the uninterrupted payment of default claims by lenders.] to a guaranty agency–

(A) in accordance with section 428(j), in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title; or

(B) if the Secretary is seeking to terminate the guaranty agency's agreement, or assuming the guaranty agency's functions, in accordance with section 428(c)(10)(F)(v), in order to assist the agency in meeting its immediate cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A);

* * * * * * *

(g) Preservation of Guaranty Agency Reserves.–

(1) Authority to recover funds.–Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part or the program authorized by part D of this title. However, the Secretary may not require the return of all of a guaranty agency reserve funds to the Secretary unless he or she determines that such return is essential to the operation of the program authorized by this part or the program authorized by part D of this title, or ***139** to ensure the orderly termination of the guaranty agency's operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that the Secretary may–

(A) direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency; and

(B) direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program

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expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(2) Termination provisions in contracts.–To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the effective date of this provision shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section.

* * * * * * *

FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS

Sec. 428. (a)***

(b) Insurance Program Agreements To Qualify Loans for Interest Subsidies.–

(1) Requirements of insurance program.–Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) if the Secretary determines that the student loan insurance program–

(A)***

* * * * * * *

(D) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) the repayment period of any insured loan may not exceed 10 years, and (iii) the note, or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the ***140** Secretary in effect at the time such note or written evidence was executed, and shall contain a notice that repayment may, following a default by the borrower, [be subject to repayment in accordance with the regulations required by subsection (m) if the Secretary has published the finding required by paragraph (2) of such subsection;] be subject to income contingent repayment in accordance with subsection (m);

* * * * * * *

(c) Guaranty Agreements for Reimbursing Losses.–

(1)***

* * * * * * *

(8) Assignment to protect federal fiscal interest.–(A) If the Secretary determines that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection. [Prior to making such determination for any guaranty agency, the Secretary shall, in consultation with the guaranty agency, develop criteria to determine whether such agency has made adequate collections efforts. In determining whether a guaranty agency's collection efforts have met such criteria, the Secretary shall consider the agency's record of success in collecting on defaulted loans, the age of the loans, and the amount of recent payments received on the loans.]

(B) An orderly transition from the Federal Family Education Loan program under this part to the Federal Direct Student Loan program under part D of this title shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon his or her request.

* * * * * * *

(10) Guaranty agency reserve level.–(A) ***

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* * * * * * *

(C) If (i) any guaranty agency falls below the required minimum reserve level in any 2 consecutive years, (ii) any guaranty agency's Federal reimbursement payments are reduced to 80 percent pursuant to section 428(c)(1)(B)(ii), or (iii) the Secretary determines that the administrative or financial condition of a guaranty agency jeopardizes such agency's continued ability to perform its responsibilities under its guaranty agreement, then the Secretary shall, as appropriate, require the guaranty agency to submit and implement a management plan acceptable to the Secretary within 30 working days of any such event.

(D) [Each] (i) If the Secretary is not seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the guaranty agency will improve its financial and administrative condition to the required level within 18 months.

***141** (ii) If the Secretary is seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets of, the guaranty agency.

(E) The Secretary may terminate a guaranty agency's agreement in accordance with subparagraph (F) if–

(i) a guaranty agency required to submit a management plan under this paragraph fails to submit a plan that is acceptable to the Secretary;

(ii) the Secretary determines that a guaranty agency has failed to improve substantially its administrative and financial condition; [or]

(iii) the Secretary determines that the guaranty agency is in danger of financial collapse[.];

(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest;

(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers; or

(vi) the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title.

(F) [Except as provided in subparagraph (G), if] If a guaranty agency's agreement under this subsection is terminated pursuant to subparagraph (E), then the Secretary shall assume responsibility for all functions of the guaranty agency under the loan insurance program of such agency. In performing such functions the Secretary is authorized to–

(i) ***

* * * * * * *

[(v) provide the guaranty agency with additional advance funds in accordance with section 422(c)(7) in order to meet immediate cash needs of the guaranty agency and ensure the uninterrupted payment of claims, with such restrictions on the use of such funds, as determined appropriate by the Secretary; or]

(v) provide the guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to–

(I) meet the immediate cash needs of the guaranty agency;
(II) ensure the uninterrupted payment of claims; or
(III) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j)(4);

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(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any ***142** funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or

[(vi)] (vii) take any other action the Secretary determines necessary to ensure the continued availability of loans made under this part to residents of the State or States in which the guaranty agency did business, the full honoring of all guarantees issued by the guaranty agency prior to the Secretary's assumption of the functions of such agency, and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary's assumption of the functions of such agency, [and] to avoid disruption of the student loan program[.], and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title.

[(G) The Secretary may not take any action under subparagraph (E) or (F) against any guaranty agency that is backed by the full faith and credit of the State where such guaranty agency is the primary guarantor.]

(G) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement under subparagraph (E), or has assumed a guaranty agency's functions under subparagraph (F)–

(i) such guaranty agency may not file for bankruptcy;

(ii) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

(iii) any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the effective date of this provision shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

(iv) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency.

(H) Notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs.

[(H)] (I) The Secretary shall not take any action under subparagraph (E) or (F) without giving the guaranty agency notice and the opportunity for a hearing.

[(I)] (J) Notwithstanding any other provision of law, the information transmitted to the Secretary pursuant to this paragraph shall be confidential and exempt from disclosure under ***143**section 552 of title 5, United States Code, relating to freedom of information, or any other Federal law.

[(J)] (K) The Secretary, within 3 months after the end of each fiscal year, shall submit to the House Committee on Education and Labor and the Senate Committee on Labor and Human Resources a report specifying the Secretary's assessment of the fiscal soundness of the guaranty agency [system, together with recommendations for legislative changes, if necessary, for the maintenance of a strong guaranty agency system.] system and the progress of the transition from the loan programs under this part to the direct student loan programs under part D of this title.

* * * * * * *

(e) Payments for Lender Referral Services.–

(1) [In general.–] In general; agreements with guaranty agencies.–(A) The Secretary shall make payments in accordance with this paragraph to a guaranty agency [in any State] with which the Secretary has an agreement under subparagraph (B)

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which provides a lender referral service for students who meet the requirements of paragraph (2).

(B)(i) The Secretary may enter into agreements with guaranty agencies that meet standards established by the Secretary to provide lender referral services in geographic areas specified by the Secretary. Such guaranty agencies shall be paid in accordance with paragraph (3) for such services.

(ii) The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures consistent with the provisions of this part and part D of this title, the Secretary determines are reasonable and necessary to provide lender referral services under this subsection and ensure loan access to student and parent borrowers during the transition from the loan programs under this part to the direct student loan programs under part D of this title. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.

(2) Student eligibility.–A student is eligible to apply for lender referral services to a guaranty agency [in a State] with which the Secretary has an agreement under paragraph (1)(B) if–

[(A) such student is either a resident of such State or is accepted for enrollment in or is attending an eligible institution in such State; and]

(A) such student is either a resident of, or is accepted for enrollment in, or is attending, an eligible institution located in a geographic area for which the Secretary (I) determines that loans are not available to all eligible students, and (II) has entered into an agreement with a guaranty agency under paragraph (1)(B) to provide lender referral services; and

* * * * * * *

(3) Amount of payment.–[The] From funds available for costs of transition under section 459 of the Act, the amount which the Secretary shall pay to any eligible guaranty agency ***144** under this paragraph shall be equal to one-half of 1 percent of the total principal amount of the loans (upon which insurance was issued under this part) to a student described in paragraph (2) who subsequently obtained such loans because of such agency's referral service.

* * * * * * *

[(5) Authorization of appropriations.–There is authorized to be appropriated such sums as are necessary to carry out the provisions of this paragraph.]

(f) Payments of Certain Costs.–

(1) Payments based on insurance program agreement.–(A) [The Secretary] For a fiscal year prior to fiscal year 1994, the Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency for the purposes of–

(i)***

* * * * * * *

(B) The total amount of payments for any fiscal year prior to fiscal year 1994 made under this paragraph shall be equal to 1 percent of the total principal amount of the loans upon which insurance was issued under this part during such fiscal year by such guaranty agency. The guaranty agency shall, be deemed to have a contractual right against the United States to receive payments according to the provisions of this subparagraph. Payments shall be made promptly and without administrative delay to any guaranty agency submitting an accurate and complete application therefor under this subparagraph.

* * * * * * *

(j) Lenders-of-Last-Resort.–

(1)***

* * * * * * *

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(4) Advances to guaranty agencies for lender-of-last resort services during transition to direct lending.–(A) In order to ensure the availability of loan capital during the transition from the Federal Family Education Loan program under this part to the Federal Direct Student Loan program under part D of this title, the Secretary is authorized to provide a guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary.

(B) Notwithstanding any other provision of this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance ***145** represented by the loans assigned shall be considered repaid by such guaranty agency.

* * * * * * *

(m) Income Contingent Repayment.–

[(1) Establishment of terms and conditions.–The Secretary may establish by regulation terms and conditions requiring the income contingent repayment of loans that are required to be repaid under this subsection. Such regulations shall specify the schedules under which the borrower's income will be assessed for repayment of loans, shall permit the discharge of remaining obligation on the loan not later than 25 years after the commencement of income contingent repayment, and may provide for the potential collection of amounts in excess of the principal and interest owed on the original loan or loans.

[(2) Collection mechanism.–The Secretary shall, to the extent funds are available therefor, enter into one or more contracts or other agreements with private firms or other agencies of the Government as necessary to carry out the purposes of this subsection. The regulations required by paragraph (1) shall not be effective unless the Secretary publishes a finding that–

[(A) the Secretary has, pursuant to this paragraph, established a collection mechanism that will provide a high degree of certainty that collections will be made in accordance with the repayment option established under paragraph (1); and

[(B) the use of such repayment option and collection mechanism will result in an increase in the net amount the Government will collect.

[(3) Loans for which income contingent repayment is required.–A loan made under this part (other than under section 428B) is required to be repaid under this section if–

[(A) the note or other evidence of the loan contains a notice that it is subject to repayment under this subsection;

[(B) the note or other evidence of the loan has been assigned to the Secretary for collection pursuant to subsection (c)(8); and

[(C) the Secretary has published the finding required by paragraph (2) of this subsection.

[(4) Additional authority.–The Secretary is authorized to prescribe such regulations as are necessary to carry out the purposes of this subsection and to protect the Federal fiscal interest.]

(1) Authority of secretary to require.–The Secretary may require any borrower who has defaulted on a loan made under this part that is assigned to the Secretary under subsection (c)(8) to repay that loan under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, the EXCEL Account established for purposes of part D of this title.

(2) Loans for which income contingent repayment may be required.–A loan made under this part may be required to be repaid under this subsection if the note or other evidence ***146** of the loan has been assigned to the Secretary pursuant to subsection (c)(8).

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(n) State Share of Default Costs.–(1) In the case of any State in which there are located any institutions of higher education with cohort default rates that exceed 20 percent, such State shall pay to the Secretary an amount equal to–

(A) the new loan volume attributable to all institutions in the State for the current fiscal year, multiplied by

(B) the percentage specified in paragraph (2), multiplied by

(C) the quotient of–

(i) the sum of the amounts calculated under paragraph (3) for each such institution in the State; divided by

(ii) the total amount of loan volume attributable to current and former students of institutions located in that State entering repayment in the period used to calculate the cohort default rate.

(2) For purposes of paragraph (1)(B), the percentage used shall be–

(A) 12.5 percent for fiscal year 1995;

(B) 20 percent for fiscal year 1996; and

(C) 50 percent for fiscal year 1997 and succeeding fiscal years.

(3) For purposes of paragraph (1)(C)(i), the amount shall be determined by calculating for each institution the amount by which–

(A) the amount of the loans received for attendance by its current and former students who (i) enter repayment during the fiscal year used for the calculation of the cohort default rate, and (ii) default before the end of the following fiscal year; exceeds

(B) 20 percent of the loans received for attendance by all the current and former students who enter repayment during the fiscal year used for the calculation of the cohort default rate.

(4) A State may charge a fee to an institution of higher education that participates in the program under this part and is located in that State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's risk of loss under this subsection. Such fee structure shall include a process by which an institution with a high cohort default rate is exempt from any fees under this paragraph if such institution demonstrates to the satisfaction of the State that exceptional mitigating circumstances, as determined by the State and approved by the Secretary, contributed to its cohort default rate.

* * * * * * *

FEDERAL CONSOLIDATION LOANS

Sec. 428C. (a) Agreements With Eligible Lenders.–

(1)***

* * * * * * *

[(3) Definition of eligible borrower.–(A) For the purpose of this section, the term "eligible borrower" means a borrower who, at the time of application for a consolidation loan–

***147** [(i) has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and

[(ii) is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will

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reenter repayment through loan consolidation.]

(b) Contents of Agreements, Certificates of Insurance, and Loan Notes.–

(1) Agreements with lenders.–Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a guaranty agency which provides–

(A) that, in the case of all lenders described in subsection (a)(1), the lender will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan under this section and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (which are so selected for consolidation);

* * * * * * *

(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations of the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994; and

[(E)] (F) such other terms and conditions as the Secretary or the guaranty agency may specifically require of the lender to carry out this section.

* * * * * * *

(4) Terms and conditions of loans.–A consolidation loan made pursuant to this section shall be insurable by the Secretary or a guaranty agency pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which–

(A)***

* * * * * * *

[(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid by the Secretary, during any period for which the borrower would be eligible for a deferral under section 428(b)(1)(M), and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section;]

***148** (C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 428(b)(1)(M), and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section; and

(ii) provides that interest shall accrue and be paid–

(I) by the Secretary, in the case of a consolidation loan that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or
(II) by the borrower, or capitalized, in the case of a consolidation loan other than one described in subclause (I);

* * * * * * *

(5) Direct loans.–In the event that a borrower is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from a lender with an agreement under subsection (a)(1), the Secretary shall offer any such borrower who applies for it, a direct consolidation loan to be repaid pursuant to an EXCEL Account under part D of this title, except that the Secretary shall not offer such loans if, in his or her judgment, the Department does not yet have the necessary origination and servicing arrangements in place for such loans.

(c) Payment of Principal and Interest.–

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(1) Interest rates.–(A) Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B) or (C). For the purposes of payment of special allowances under section 438(b)(2), the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.

[(B) Except as provided in subparagraph (C), a consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan which is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

[(C) A consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan equal to not less than 9 percent.]

(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of–

(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(C) A consolidation loan made on or after July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(2) Repayment schedules.–(A) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2)(F) and approved by the issuer ***149** of such certificate, the lender of a consolidation loan shall establish repayment terms as will promote the objectives of this section, which shall include the establishment of graduated or [income sensitive repayment schedules. Such repayment terms] income sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income sensitive repayment schedules, or by the terms of repayment pursuant to an EXCEL Account offered by the Secretary under subsection (b)(5), such repayment terms shall require that if the sum of the consolidation loan and the amount outstanding on other student loans to the individual–

(i) is less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;

[(i)] (ii) is equal to or greater than $7,500 but less than $10,000, then such consolidation loan shall be repaid in not more than 12 years;

[(ii)] (iii) is equal to or greater than $10,000 but less than $20,000, then such consolidation loan shall be repaid in not more than 15 years;

[(iii)] (iv) is equal to or greater than $20,000 but less than $40,000, then such consolidation loan shall be repaid in not more than 20 years;

[(iv)] (v) is equal to or greater than $40,000 but less than $60,000, then such consolidation loan shall be repaid in not more than 25 years; or

[(v)] (vi) is equal to or greater than $60,000, then such consolidation loan shall be repaid in not more than 30 years.

[(B) Unless a consolidation loan under subparagraph (A)(ii) will be used to discharge at least $5,000 of loans made under this part, such loan shall be repaid in accordance with subparagraph (A)(i).

[(C)] (B) The amount outstanding on other student loans which may be counted for the purpose of subparagraph (A) may not exceed the amount of the consolidation loan.

(3) Additional repayment requirements.–Notwithstanding paragraph (2)–

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(A) except as required by the terms of repayment pursuant to an EXCEL Account offered by the Secretary under subsection (b)(5), a repayment schedule established with respect to a consolidation loan shall require that the minimum installment payment equal to not less than the accrued unpaid interest; and

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LEGAL POWERS AND RESPONSIBILITIES

Sec. 432. (a)***

* * * * * * *

(q) Optically Imaged Documents.–Records maintained in accordance with section 484A(c) may be used in any proceeding, as ***150** permitted by section 484A(c), with respect to a loan that was made under this part and has been assigned to the Secretary.

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STUDENT LOAN MARKETING ASSOCIATION

Sec. 439. (a)***

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(q) Lender of Last Resort.–

(1) Action at request of secretary.–(A) Whenever the Secretary determines that eligible borrowers in a State not served by a guaranty agency or an eligible lender in a State described in section 435(d)(1) (D) or (F) are seeking and are unable to obtain loans under this part, [the Association or its designated agent may begin making loans] the Association or its designated agent shall, subject to the limitations in section 428(j)(3), begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. [The Association shall give preference to such States in making loans under this subsection.]

(2) Issuance and coverage of loans.–(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 435(d)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, [the Association or its designated agent may] the Association or its designated agent shall, subject to the limitations in section 428(j)(3), begin making loans in accordance with this subsection at the request of the Secretary.

(3) Termination of lending.–The Association or its designated agent shall cease making loans under this part in any State at such time as it is determined by the Secretary, with regard to loans made under paragraph (1), or by any party to the agreement required by paragraph (2), [that–

[(A) the conditions which caused the implementation of this subsection have ceased to exist; or

[(B) the implementation of this subsection has either (i) further reduced the availability of loans from other sources in the applicable geographical area, or (ii) inhibited the formation in a State of an agency which would have an agreement pursuant to section 428(b) of this part which would have the responsibility of developing local sources of funds for student loans.] that the conditions that caused the implementation of this subsection have ceased to exist.

* * * * * * *

(s) Transition Study.–The Secretaries of Education and the Treasury shall prepare a study, to be completed within 6 months of the enactment of this provision, which shall examine alternatives concerning the status, operations, and purposes of the Association during and after the transition from the Federal Family Education ***151** Loan program to the Federal Direct Student Loan program. Such study shall–

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(1) consider how best to meet the needs of students and taxpayers;

(2) reflect the need for the Association to maintain liquidity and perform other functions for the Federal Family Education Loan program during the transition from such program to the Federal Direct Student Loan program under part D of this title, including additional duties as specified by the Secretary of Education or the Secretary of the Treasury;

(3) consider any appropriate change to part D of title VII, relating to the College Construction Loan Insurance Association; and

(4) be considered by the Secretaries of Education and the Treasury in developing any legislative proposals concerning any changes to the status of the Association as a Government-sponsored enterprise or its duties under the Federal Family Education Loan program.

* * * * * * *

[PART D–FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM

[SEC. 451. PROGRAM AND PAYMENT AUTHORITY.

[(a) Program Authority.–The Secretary shall, in accordance with the provisions of this part, carry out a loan demonstration program for qualified students and parents at selected institutions of higher education to enable the students to pursue their courses of study at such institutions during the period beginning on July 1, 1994 and ending on June 30, 1998.

[(b) Payment Authority.–

[(1) General authority.–The Secretary shall make payments under this part for any fiscal year to institutions of higher education having an agreement under section 454, on the basis of the estimated needs of students at each institution and parents for student or parent loans, taking into consideration the demand and eligibility of such students and parents for loans under this part.

[(2) Entitlement provision.–An institution of higher education which has an agreement with the Secretary under section 454 shall be deemed to have a contractual right against the United States to receive payments according to that agreement.

[SEC. 452. PAYMENT RULES.

[(a) In General.–The Secretary shall make payments required by section 451 in such installments as the Secretary determines–

[(1) reflect accurately the disbursement of funds for student and parent loans by the institution of higher education, and

[(2) will best carry out the objectives of this part.

[(b) Initial Payments.–The initial payments for any academic year required by section 451 shall be made available to each institution of higher education not later than 10 days prior to the beginning of the academic year at such institution.

***152** [SEC. 453. SELECTION BY THE SECRETARY.

[(a) Entry Requirement.–The Secretary shall enter into agreements with institutions of higher education, at which the total loan volume under the Federal Stafford Loan program, the Federal Supplemental Loans for Students program, and the Federal PLUS loan program was $500,000,000 in the most recent year for which data is available, to participate in the loan demonstration program to make loans for the period beginning with the academic year beginning on July 1, 1994, and ending with loans made before June 30, 1998. Such agreements shall be concluded not later than January 1, 1994.

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[(b) Selection Criteria.–The Secretary shall enter into agreements with institutions of higher education which represent a cross-section of all institutions of higher education participating in part B of this title in terms of control of the institution, length of academic program, highest degree offered, size of student enrollment, percentage of students borrowing under part B, geographic location, annual loan volume, default experience and composition of the student body.

[(c) Preference for Applying Institutions.–In constituting the cross-section of institutions of higher education required by the previous subsection, the Secretary shall first enter into agreements, to the maximum extent possible consistent with the requirements of constituting the cross-section, with institutions of higher education which apply to participate in the loan demonstration program. Institutions of higher education desiring to participate in the demonstration shall submit an application containing such information as the Secretary may by regulation prescribe.

[(d) Designation of Additional Institutions.–If an insufficient number of institutions of higher education apply and satisfy the conditions provided in subsections (a) and (b) of this section, the Secretary shall designate additional institutions of higher education from among those eligible to participate in part B to participate in the loan demonstration program in order to satisfy the conditions provided in subsections (a) and (b) of this section. An institution of higher education designated by the Secretary pursuant to this subsection may decline to participate in the loan demonstration program for good cause pursuant to regulations established by the Secretary.

[(e) Limitation.–The Secretary shall ensure that the annual loan volume under the Federal Stafford Loan program, the Federal Supplemental Loans for Students program, and the Federal Plus loan program at the institutions of higher education with which the Secretary enters into agreements under this part, in the most recent fiscal year for which data are available, represents not more than 15 percent of the loan guarantees of any guaranty agency under such programs and the Secretary shall determine that such guaranty agency will remain financially sound.

[(f) Selection of Subgroup to Test Income Contingent Repayment.–

[(1) Selection.–Within the institutions of higher education selected or designated to participate in the loan demonstration program under this part, the Secretary shall select 35 percent ***153** of such institutions to offer income contingent repayment methods in accordance with section 454(6).

[(2) Finding Required.–The Secretary shall not select institutions to offer such repayment methods unless the Secretary publishes a finding that–

[(A) the Secretary has established a collection mechanism that will provide a high degree of certainty that collections will be made in accordance with the repayment option; and

[(B) the use of such repayment option and collection mechanism will result in an increase in the net amount the Government will collect.

[(g) Consortia.–Institutions of higher education may apply to participate in the program pursuant to subsection (c) as consortia. The Secretary shall consider the members of the consortia as individual institutions for the purposes of subsection (b). Institutions of higher education selected by the Secretary to participate in the program may also enter into consortia for the purpose of carrying out the agreement required by section 454.

[SEC. 454. AGREEMENT REQUIRED.

[An agreement with any institution of higher education for participation in the loan demonstration program shall–

[(1) provide for the establishment and maintenance of a loan demonstration program at the institution of higher education under which–

[(A) the institution of higher education will identify eligible students who seek student financial assistance at such institution, in accordance with section 484;

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[(B) the institution of higher education will estimate the need of each such student as required by part F;

[(C) the institution of higher education will originate loans to such eligible students and eligible parents in accordance with this part, and will not charge any administrative fees to such students or parents for such origination activities;

[(D) the institution of higher education will provide timely information concerning the status of student and parent borrowers to the contractor or contractors responsible for loan collection pursuant to section 457; and

[(E) the institution of higher education will participate in the loan demonstration program for its duration, subject to procedures for withdrawal established by section 455;

[(2) provide assurances that the institution of higher education will comply with the provisions of section 463A, relating to student loan information, with respect to loans made under this part;

[(3) provide that the note or evidence of obligation on the loan shall be the property of the Secretary and that the institution of higher education will act as the agent of the Secretary for the purpose of making loans under the loan demonstration program;

[(4) provide that the institution of higher education will accept responsibility and liability stemming from its failure to perform its functions pursuant to the agreement;

***154** [(5) provide that students at the institution of higher education and their parents (with respect to such students) will not be eligible to participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal Plus loan program for the period during which such institution participates in the loan demonstration program;

[(6) in the case of the institutions selected by the Secretary pursuant to section 453(f), include such terms and conditions as the Secretary may require by regulation for testing income contingent repayment methods, which shall include–

[(A) requiring such institutions to offer the option of income contingent repayment, based on an annual review of the borrowers Federal income tax return, to any student who applies for a loan under this part;

[(B) the additional or different terms and conditions to be included in the notes or other agreements entered into by the borrower, as required by such regulations, including provisions with respect to the disclosure by the borrower of subsequent income;

[(C) providing for the discharge of loans after not more than 25 years of income contingent repayment; and

[(D) such data and reporting requirements and such other provisions as the Secretary considers necessary to carry out the purposes of section 458(d)(2) and to the protection of the Federal fiscal interest; and

[(7) include such other provisions as may be necessary to protect the financial interest of the United States and to promote the purposes of this part.

[SEC. 455. WITHDRAWAL AND TERMINATION PROCEDURES.

[The Secretary shall establish by regulation procedures which enable institutions of higher education who have made agreements with the Secretary pursuant to section 454 to withdraw or to be terminated from the loan demonstration program.

[SEC. 456. TERMS AND CONDITIONS.

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[Unless otherwise specified in this part, the loans made under this part shall have the same terms, conditions, and benefits as loans made under sections 428, 428A, and 428B of this title. Any loan made under this part shall be eligible for consolidation under section 428C of part B of this title.

[SEC. 457. LOAN COLLECTION FUNCTIONS UNDER COMPETITIVE PROCUREMENT CONTRACTS.

[(a) In General.–The Secretary shall provide, through contracts awarded on a competitive basis, for–

[(1) the collection of principal and interest on loans made under this part by not less than 5 contracts, at least one of which shall be for servicing loans that are subject to income contingent repayment;

[(2) the collection of defaulted loans made under this part;

[(3) the establishment and operation of a central data system for the maintenance of records on all loans made under this part;

[(4) programs for default prevention; and

***155** [(5) such other programs as the Secretary determines are necessary to ensure the success of the loan demonstration program.

[(b) Servicing for Income Contingent Loans.–The Secretary shall, through contract, ensure the availability of servicing of loans made pursuant to section 454(6) at a cost comparable to that available for loans under part B of this title (that are not subject to income contingent repayment).

[(c) Information on Income Contingent Loans.–The Secretary shall acquire such information as is necessary regarding the adjusted gross income of borrowers (under this part and under part B) of loans that are subject to income contingent repayment for the purpose of determining the annual repayment obligations of such borrowers. The Secretary, not less often than once per year, shall provide to the servicer, lender, or holder of a loan under this part the Secretary's determination of the borrower's repayment obligation on that loan for such year.

[SEC. 458. REPORTS.

[(a) Annual Reports.–The Secretary shall submit to the Congress not later than July 1, 1993, and each July 1 for the 5 succeeding years an annual report describing the progress and status of the loan demonstration program.

[(b) Interim Final Report.–The Comptroller General shall submit to the Congress not later than January 1, 1997, an interim final report evaluating the experience of the Department of Education, the participating institutions of higher education, students, and parents with respect to the loan demonstration program. The report shall include–

[(1) the administrative costs, including costs per loan, incurred by participating institutions of higher education in administering the loan demonstration program;

[(2) the administrative costs, including costs per loan, incurred by the Department of Education and its contractors in carrying out its responsibilities, including the costs of origination, data systems, servicing, and collection;

[(3) an evaluation of the effectiveness of the loan demonstration program in providing services to students and parents, including loan application, loan origination, student financial aid packaging, tracking of student status, responsiveness to student inquiries and processing of deferments, forbearances, and repayments;

[(4) the frequency and cost of borrower delinquency and default under the loan demonstration program and losses incurred by institutions of higher education and servicers, including losses caused by improper origination or servicing of loans;

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[(5) the timeliness of capital availability to institutions of higher education and of loans to students and parents and the cost of loan capital;

[(6) an evaluation of the effectiveness of the income contingent repayment option;

[(7) a comparison of the experience of institutions of higher education, students, and parents participating in loan demonstration program with the experience of institutions, students, and parents in the control group described in subsection ***156** (d) with respect to the subjects indicated in paragraphs (1) through (6) of this subsection;

[(8) an evaluation of the administrative performance of the Department;

[(9) an analysis of the reasons institutions selected by the Secretary pursuant to section 453(d) chose not to participate and the reasons institutions withdrew or were terminated pursuant to section 455;

[(10) an analysis of the experience of borrowers with loans under both this part and part B and recommendations for the most effective repayment procedures for such borrowers;

[(11) a comparison of the cost of loan capital for loans for the loan demonstration program with the cost of loan capital for the comparable programs in part B of this title;

[(12) an analysis, where practicable, of the experience of institutions which participate as part of a consortia; and

[(13) recommendations for modifications, continuation, expansion, suspension, or termination of the loan demonstration program or replacement of all or some of the programs authorized by part B.

[(c) Final Report.–The Comptroller General shall submit to the Congress not later than May 1, 1998, a final report evaluating the experience of the Department of Education, the participating institutions of higher education, and students with respect to the loan demonstration program. The report shall include the same matters provided for in subsection (b) of this section.

[(d) Control Group.–

[(1) Regular repayment.–To assist the Comptroller General in preparing the reports required by subsections (b)(6) and (c) of this section, the Secretary shall select a control group of institutions of higher education, which represent a cross-section of all institutions of higher education participating in part B of this title and which is comparable to the cross-section of institutions of higher education selected for participation in the loan demonstration program pursuant to section 453. The Secretary shall select the control groups in the same manner, pursuant to section 453, that the institutions of higher education are selected to participate in the demonstration program.

[(2) Income contingent repayment.–If the Secretary makes a selection of institutions to test income contingent repayment methods in accordance with section 453(f), the Secretary shall, within the control group selected under paragraph (1), identify a group of institutions to serve as a control group for comparison with the institutions offering income contingent loans under this part pursuant to section 454(6). The institutions selected for the control group under this paragraph shall represent a reasonable cross section of the institutions selected under paragraph (1). The Secretary shall publish a list of the institutions that are so selected. Any eligible lender of a loan to a student for attendance at any such institution shall, in accordance with regulations prescribed by the Secretary, offer such students the option of repaying such loans on an income contingent basis consistent with such regulations.

***157** [(3) Income contingent terms and conditions.–The Secretary shall, by regulation, establish the terms and conditions for loans that are subject to paragraph (2) of this subsection. Such terms and conditions shall, to the extent practicable, be the same as the terms and conditions of loans made pursuant to section 454(6). The Secretary is authorized to enter into such agreements (and amendments to agreements) under part B of this title as may be necessary to carry out paragraph (2) and this paragraph.

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[(e) Treatment of Costs.–In reporting with respect to costs in the reports required by subsections (b) and (c) of this section, the Comptroller General shall report separately the nonrecurrent costs such as start-up costs associated with the loan demonstration program, the administrative costs incurred by institutions of higher education in providing information to enable the Comptroller General to prepare the reports required by subsections (b) and (c) of this section and the normal costs of operating the loan demonstration program.

[SEC. 459. SCHEDULE OF REGULATORY ACTIVITIES BY THE SECRETARY.

[(a) Proposed Regulations.–The Secretary shall publish in the Federal Register not later than April 1, 1993, all proposed regulations for carrying out the program established by this part, including regulations with respect to–

[(1) payments to institutions of higher education;

[(2) the selection of institutions of higher education to participate in the loan demonstration program;

[(3) application by institutions of higher education to participate in the loan demonstration program;

[(4) agreements between the Secretary and institutions of higher education participating in the loan demonstration program;

[(5) procedures with respect to the withdrawal and termination of institutions of higher education from the loan demonstration program; and

[(6) procedures by which institutions designated by the Secretary pursuant to section 453(d) may decline to participate in the loan demonstration program.

[(b) Final Regulations.–The Secretary shall publish in the Federal Register not later than July 1, 1993, all final regulations for carrying out the program established by this part, including regulations with respect to the same matters provided for in subsection (a) of this section.

[(c) Closing Date for Applications From Institutions.–The Secretary shall establish October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the loan demonstration program pursuant to section 453(c).

[(d) Publication of List of Participating Institutions and Control Group.–Not later than January 1, 1994, the Secretary shall publish in the Federal Register a list of the institutions of higher education selected to participate in the loan demonstration program pursuant to section 453 and a list of the institutions of higher education in the control group required by section 458(d).

***158** [(e) Procurement Contracts.–The Secretary shall award contracts pursuant to section 457 not later than February 1, 1994.

[SEC. 459A. FUNDS FOR ADMINISTRATIVE EXPENSES.

[Each fiscal year, there shall be available to the Secretary of Education from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, not to exceed $10,000,000 in fiscal year 1993, $17,000,000 in fiscal year 1994, $37,000,000 in fiscal year 1995, $54,000,000 in fiscal year 1996, and $65,000,000 in fiscal year 1997.]

PART D–FEDERAL DIRECT STUDENT LOAN PROGRAM

SEC. 451. PURPOSE; PROGRAM AUTHORIZATION.

(a) Purpose.–It is the purpose of this part–

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(1) to simplify the delivery of student loans to borrowers and eliminate borrower confusion;

(2) to provide a variety of repayment plans, including income contingent repayment through the EXCEL Account, to borrowers so that they have flexibility in managing their student loan repayment obligations, and so that those obligations do not foreclose community service-oriented career choices for those borrowers;

(3) to replace, through an orderly transition, the Federal Family Education Loan Program under part B of this title with the Federal Direct Student Loan Program under this part;

(4) to avoid the unnecessary cost, to taxpayers and borrowers, and administrative complexity associated with the Federal Family Education Loan Program under part B of this title through the use of a direct student loan program; and

(5) to create a more streamlined student loan program that can be managed more effectively at the Federal level.

(b) Program Authority.–There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students in attendance at participating institutions of higher education selected by the Secretary (and the eligible parents of such students), to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994. Such loans shall be made by participating institutions that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

SEC. 452. FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS.

(a) In General.–The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part–

(1) directly to an institution of higher education that has an agreement with the Secretary under section 454(a) to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 454(b) to originate loans under this part, or

***159** (2) through an alternative originator designated by the Secretary to students and parents of students attending institutions of higher education that have an agreement with the Secretary under section 454(a) but that do not have an agreement with the Secretary under section 454(b).

(b) Fees for Origination Services.–

(1) Fees for institutions.–The Secretary shall pay fees to institutions of higher education (or a consortium of such institutions) with agreements under section 454(b), in an amount established by the Secretary, to assist in meeting the costs of loan origination. Such fees–

(A) shall be paid by the Secretary based on all the loans made under this part to a particular borrower in the same academic year;

(B) shall be subject to a sliding scale that decreases the amount of such fees as the number of borrowers increases; and

(C)(i) for academic year 1994–1995, shall not exceed a program-wide average of $10 per borrower for all the loans made under this part in the same academic year; and

(ii) for succeeding academic years, shall not exceed such average fee as the Secretary shall establish in regulations.

(2) Fees for alternative originators.–The Secretary shall pay fees for loan origination services to alternative originators of loans made under this part in an amount established by the Secretary in accordance with the terms of the contract between the Secretary and each such alternative originator.

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(c) No Entitlement To Participate or Originate.–No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part. Nothing in this subsection shall be construed so as to limit the entitlement of an eligible student attending a participating institution (or the eligible parent of such student) to borrow under this part.

SEC. 453. SELECTION OF INSTITUTIONS FOR PARTICIPATION AND ORIGINATION.

(a) Phase-in of Program.–

(1) General authority.–The Secretary shall enter into agreements pursuant to section 454(a) with institutions of higher education to participate in the direct student loan programs under this part, and agreements pursuant to section 454(b) with institutions of higher education to originate loans in such programs, for academic years beginning on or after July 1, 1994. Alternative origination services, through which an entity other than the participating institution at which the student is in attendance originates the loan, shall be provided by the Secretary, through one or more contracts under section 456 or such other means as the Secretary may provide, for students attending participating institutions that do not originate direct student loans under this part. Such agreements for the first year of the program shall, to the extent feasible, be entered into not later than January 1, 1994.

(2) Transition provisions.–In order to ensure an expeditious but orderly transition from the loan programs under part ***160** B of this title to the direct student loan programs under this part, the Secretary shall, in the exercise of his or her discretion, determine the number of institutions with which he or she shall enter into agreements under sections 454(a) and (b) for any academic year, except that the Secretary shall exercise such discretion so as to achieve the following goals:

(A) for academic year 1994–1995, loans made under this part shall represent 4 percent of the sum of new student loan volume under this part and part B of this title;

(B) for academic year 1995–1996, loans made under this part shall represent 25 percent of the sum of new student loan volume under this part and part B of title;

(C) for academic year 1996–1997, loans made under this part shall represent 60 percent of the sum of new student loan volume under this part and part B of this title; and

(D) for academic year 1997–1998, loans made under this part shall represent 100 percent of the sum of new student loan volume under this part and part B of this title.

(3) Cash management.–The requirements of the Cash Management Improvement Act of 1990 (Public Law 101–453) shall apply to the program under this part only to the extent specified in a schedule established by the Secretaries of Education and the Treasury, except that such schedule shall provide for the application of all such requirements not later than July 1, 1998.

(b) Selection Criteria for Participation.–

(1) Application.–Each institution of higher education desiring to participate in the direct student loan program under this part shall submit an application satisfactory to the Secretary containing such information and assurances as the Secretary may require.

(2) Agreement.–When the program authorized under this part is fully implemented, the Secretary shall enter into agreements under section 454(a) with institutions that submit applications in accordance with paragraph (1).

(3) Transition selection criteria.–Until such full implementation, the Secretary shall select institutions for participation in the direct student loan program under this part, and shall enter into agreements with them under section 454(a), from among those institutions that submit the applications described in paragraph (1), and meet such other eligibility requirements as the Secretary may prescribe, by–

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(A)(i) categorizing such institutions according to anticipated loan volume, length of academic program, and control of the institution; and

(ii) selecting institutions that are reasonably representative of the respective categories; and

(B) if needed to carry out the purposes of this part, selecting additional institutions.

(c) Selection Criteria for Origination.–

(1) In general.–The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that–

(A) has an agreement under subsection 454(a);

(B) desires to originate loans under this part; and

***161** (C) meets the criteria specified in paragraph (2).

(2) Transition selection criteria.–For academic year 1994–1995, the Secretary may approve an institution to originate loans only if such institution–

(A) made loans under part E of this title in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 464(g) for the most recent fiscal year for which data are available;

(B) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E;

(C) is not overdue on program or financial reports or audits required under this title;

(D) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c);

(E) in the opinion of the Secretary, has not had significant deficiencies identified by the State postsecondary review entity under subpart 1 of part H of this title;

(F) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this title, including those demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application;

(G) provides an assurance that it has no delinquent outstanding debts to the United States, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the United States, or the Secretary in his or her discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency or agencies; and

(H) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

(3) Regulations governing approval after transition.–For academic year 1995–1996 and subsequent academic years, the Secretary shall publish regulations governing the approval of institutions to originate loans.

(d) Consortia.–Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education with agreements under section 454(a) may apply as consortia to originate loans under this part for students in attendance at such institutions. Such institutions shall each be required to meet the requirements of subsection (c) with respect to loan

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origination.

SEC. 454. AGREEMENTS WITH INSTITUTIONS.

(a) Participation Agreements.–An agreement with any institution of higher education for participation in the direct student loan program under this part shall–

(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will–

(A) identify eligible students who seek student financial assistance at such institution in accordance with section 484;

***162** (B) estimate the need of each such student as required by part F of this title for an academic year, provided that any loan obtained by a student under this part with the same terms (except as otherwise provided in this part) as loans made under section 428A or 428H, or a loan obtained by a parent under this part with the same terms (except as otherwise provided in this part) as loans made under section 428B, or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to the amount of such loan, except that the institution may, in exceptional circumstances specified in regulations prescribed by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student's determination of need (as determined under part F of this title), if the reason for such action is documented and provided in written form to such student;

(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G (other than subsection (b)(1) of such section); and

(E) provide timely and accurate information–

(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after they leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and
(ii) if the institution does not have an agreement with the Secretary under subsection (b), concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part;

(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) provide that students at the institution and their parents (with respect to such students) will not be eligible to participate in the programs under part B of this title for the period during which such institution participates in the direct student loan program under this part;

(5) provide for the implementation of a quality assurance system, as established by the Secretary, to ensure that the institution ***163** is complying with program requirements and meeting program objectives;

(6) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

(7) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and

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to promote the purposes of this part.

(b) Origination.–An agreement with any institution of higher education for the origination of loans under this part shall–

(1) supplement the agreement entered into in accordance with subsection (a);

(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), (6), and (7) of subsection (a), as modified to relate to the origination of loans by the institution;

(3) provide that the institution will originate loans to eligible students and parents in accordance with this part; and

(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

(c) Withdrawal and Termination Procedures.–The Secretary shall establish procedures by which institutions may withdraw or be terminated from the program under this part.

SEC. 455. TERMS AND CONDITIONS OF LOANS.

(a) In General.–

(1) Parallel terms, conditions, benefits, and amounts.–Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under sections 428, 428A, 428B, and 428H of this title.

(2) Designation of loans.–Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under–

(A) section 428 shall be known as “Federal Direct Student Loans”;

(B) section 428A shall be known as “Federal Direct Supplemental Loans for Students”;

(C) section 428B shall be known as “Federal Direct PLUS Loans”; and

(D) section 428H shall be known as “Federal Direct Unsubsidized Student Loans”.

(b) Interest Rates.–

(1) Rates for fdsl and fdusl.–(A) For Federal Direct Student Loans and Federal Direct Unsubsidized Student Loans made before July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 3.1 percent,

except that such rate shall not exceed 9 percent.

(B) For Federal Direct Student Loans and Federal Direct Unsubsidized Student Loans made on or after July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 for all such loans and be equal to–

***164** (i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

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(ii) 1 percent,

except that such rate shall not exceed 9 percent.

(2) Rates for fdsls.–(A) For Federal Direct Supplemental Loans for Students made before July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

(i) the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 3.1 percent,

except that such rate shall not exceed 11 percent.

(B) For Federal Direct Supplemental Loans for Students made on or after July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 for all such loans and be equal to–

(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(ii) 1.5 percent,

except that such rate shall not exceed 11 percent.

(3) Rates for fdplus.–(A) For Federal Direct PLUS loans made before July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 for loans and be equal to–

(i) the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus

(ii) 3.1 percent,

except that such rate shall not exceed 10 percent.

(B) For Federal Direct PLUS loans made on or after July 1, 1997, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 for all such loans and be equal to–

(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

(ii) 2.1 percent,

except that such rate shall not exceed 10 percent.

(4) Publication.–The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of Treasury and shall publish such rate in ***165** the Federal Register as soon as practicable after the date of determination.

(c) Loan Fee.–For academic years 1994–1995, 1995–1996, and 1996–1997, the Secretary shall charge the borrower of a loan made under this part a loan fee of 5 percent of the principal amount of the loan. For academic years 1997–1998 and succeeding academic years, the Secretary shall charge the borrower of a loan made under this part a loan fee of 3.65 percent of the principal amount of the loan.

(d) Repayment Plans.–

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(1) Design and selection.–Consistent with criteria established by the Secretary, the Secretary shall offer to a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on his or her loans. The borrower may choose–

(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, provided that the borrower annually repays a minimum amount determined by the Secretary, consistent with the requirements of section 428(b)(1)(L);

(C) a graduated repayment plan, with annual repayment amounts established at two or more graduated levels and paid over a fixed or extended period of time, provided that any of the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

(D) except for the borrower of a Federal Direct PLUS Loan, an income contingent repayment plan known as the "EXCEL Account," with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time, not to exceed a maximum length of time determined by the Secretary.

(2) Selection by secretary.–If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

(3) Changes in selections.–The borrower of a loan made under this part may change his or her selection of a repayment plan under paragraph (1), or the Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

(4) Alternative repayment plans.–The Secretary may provide, on a case-by-case basis, an alternative repayment plan to a borrower of a loan under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's exceptional circumstances. ***166** In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

(5) Repayment after default.–The Secretary may require any borrower who has defaulted on a loan made under this part to–

(A) pay all reasonable collection costs associated with such loan; and

(B) repay the loan pursuant to an EXCEL Account in accordance with subsection (e).

(e) Repayment Through EXCEL Accounts.–

(1) Information and procedures.–The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to an EXCEL Account for the purpose of determining the annual repayment obligation of the borrower. Return and return information (as defined in section 6103 of the Internal Revenue Code of 1986) may be obtained under the preceding sentence only to the extent authorized by section 6103(l)(13) of such Code. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively repayment pursuant to an EXCEL Account.

(2) Repayment based on adjusted gross income.–A repayment schedule for a loan made under this part and repaid pursuant to an EXCEL Account shall be based on adjusted gross income (as defined in section 62 of the Internal Revenue Code of

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1986, 26 U.S.C. 62) of the borrower or, if the borrower is married and files a Federal income tax return jointly with his or her spouse, on adjusted gross income of the borrower and his or her spouse.

(3) Additional documents.–A borrower who chooses, or is required, to repay a loan made under this part pursuant to an EXCEL Account, and for whom adjusted gross income is unavailable or does not reasonably reflect his or her current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

(4) Repayment schedules.–EXCEL Account repayment schedules shall be established by the Secretary through regulations and shall require payments measured as a percentage of the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

(5) Calculation of balance due.–The balance due on a loan made under this part that is repaid pursuant to an EXCEL Account shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may limit by regulation ***167** the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

(6) Notification to borrowers.–The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to an EXCEL Account is notified of the terms and conditions of such plan, including notification of such borrower–

(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(l)(13) of the Internal Revenue Code of 1986; and

(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or his or her spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

(f) Deferment.–

(1) Effect on principal and interest.–A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest–

(A) shall not accrue, in the case of a Federal Direct Student Loan or a Federal Direct Consolidation Loan that consolidated only Federal Direct Student Loans, or a combination of such loans and Federal Student Loans for which the student borrower received an interest subsidy under section 428; or

(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct Supplemental Loan for Students loan, a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Student Loan, or a Federal Direct Consolidation Loan other than those described in subparagraph (A).

(2) Eligibility.–A borrower of a loan made under this part shall be eligible for a deferment during any period–

(A) during which the borrower–

(i) is pursuing at least a half-time course of study at an eligible institution, as determined by such institution; or
(ii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part (other than a Federal Direct PLUS Loan, or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

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(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment; or

***168** (C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o), that the borrower has experienced or will experience an economic hardship, regardless of the reason for such hardship.

(g) Federal Direct Consolidation Loans.–A borrower of a loan made under this part may consolidate such loan with the loans described in subsections (a)(4) and (d)(1)(C) of section 428C only under the terms and conditions established by the Secretary under this part. Loans made under this subsection shall be known as "Federal Direct Consolidation Loans".

(h) Borrower Defenses.–Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations (except as authorized under section 458(a)) which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.

(i) Optically Imaged Documents.–Records maintained in accordance with section 484A(c) may be used in any proceeding, as permitted by section 484A(c), with respect to a loan made under this part.

(j) Nondischargeability in Bankruptcy.–Notwithstanding any other provision of law, a loan made under this part shall not be dischargeable in bankruptcy.

SEC. 456. CONTRACTS.

(a) Contracts for Supplies and Services.–

(1) In general.–The Secretary may award one or more contracts for services and supplies under subsection (b). The entities with which the Secretary may enter into such contracts may include, but are not limited to, agencies with agreements with the Secretary under sections 428(b) and (c), if such agencies are otherwise qualified and comply with the procedures applicable to the award of such contracts.

(2) Exemption.–(A) The Secretary may, through June 30, 1998, award contracts under this section without regard to the requirements in section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416), and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) and the corresponding requirements of the Federal Acquisition Regulations if the Secretary–

(i) determines in writing, on a case-by-case basis, that the Government's need for the services and supplies to be provided under the contract is of such an unusual and compelling urgency that sources from which the Secretary solicits bids or proposals must be limited; and

(ii) notifies the Congress in writing of that determination not more than 30 days after the award of the contract.

(B) The Secretary may make the determination described in subparagraph (A)(i) if the Secretary determines that exemption from the requirements described in subparagraph (A) is in the public interest and necessary for the orderly transition from the ***169** loan programs under part B to the direct student loan programs under this part.

(C) On and after July 1, 1998, all statutory and regulatory requirements described in subparagraph (A) shall apply to the award of a contract under this section.

(b) Contracts for Origination, Servicing, and Data Systems.–The Secretary may enter into one or more contracts for–

(1) the alternative origination of loans to students attending institutions with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 454(b);

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(2) the servicing and collection of loans made under this part;

(3) the establishment and operation of one or more data systems for the maintenance of records on all loans made under this part;

(4) services to assist in the orderly transition from the loan programs under part B to the direct student loan programs under this part; and

(5) such other aspects of the direct student loan programs as the Secretary determines are necessary to ensure the successful operation of the programs.

SEC. 457. REPORTS.

(a) Annual Reports.–The Secretary shall submit to the Congress not later than July 1, 1993, and each July 1 for the 5 succeeding years an annual report describing the progress and status of the loan program under this part.

(b) Research, Demonstration, and Evaluation.–The Secretary may use a portion of the funds described in section 459 for research on, or the demonstration or evaluation of, any aspects of the program authorized by this part, including flexible repayment plans.

SEC. 458. REGULATORY ACTIVITIES.

(a) Notice in Lieu of Regulations for First Year of Program.–The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the direct student loan program authorized by this part. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.

(b) Closing Date for Applications From Institutions.–The Secretary shall establish a date not later than October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the first year of the direct loan program under this part.

(c) Publication of List of Participating Institutions and Control Group.–Not later than January 1, 1994, the Secretary shall publish in the Federal Register a list of the institutions of higher education selected to participate in the first year of the direct loan program under this part.

SEC. 459. FUNDS FOR ADMINISTRATIVE EXPENSES.

Each fiscal year, there shall be available to the Secretary of Education from funds not otherwise appropriated, funds to be obligated ***170** for administrative costs under this part, including the costs of the transition from the loan programs under part B to the direct student loan programs under this part and transition support for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed $261,000,000 in fiscal year 1994, $346,000,000 in fiscal year 1995, $552,000,000 in fiscal year 1996, $596,000,000 in fiscal year 1997, and $749,000,000 in fiscal year 1998. If in any fiscal year, the Secretary determines that additional funds for administrative expenses are needed as a result of such transition, or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary shall not exceed $2,504,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.

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PART G–GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

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STATUTE OF LIMITATIONS; OPTICALLY IMAGED DOCUMENTS

Sec. 484A. (a)***

* * * * * * *

(c) In General.–(1) It is the purpose of this subsection to–

(A) allow the Secretary to use optical imaging technology to store and retrieve documents and records, including promissory notes and repayment agreements, required for the administration of the programs authorized under part D of this title, or for the administration of loans made under part B of this title that have been assigned to the Secretary;

(B) permit the Secretary to destroy originals of such documents and records, including promissory notes and repayment agreements, after they have been optically imaged, thereby achieving significant savings in storage and retrieval costs; and

(C) ensure that the Secretary may introduce as evidence in any proceeding with respect to the programs or loans described in subparagraph (A) optically imaged documents and records, including promissory notes and repayment agreements.

(2) Notwithstanding any other provision of Federal or State law, an optically imaged copy of any document or record, including a promissory note or repayment agreement, may be introduced as evidence in any proceeding with respect to the programs or loans described in paragraph (1)(A) in any Federal or State court, or other tribunal, and such optically imaged copy shall be admissible in any court or tribunal of the United States or any State as if it were the original document or record and have the same force and effect as the original.

(3) Nothing in this subsection shall be interpreted to preclude the admissibility of a duplicate of a document or record required for the administration of the programs or loans described in paragraph ***171** (1)(A) made by a technology other than optical imaging consistent with the Federal Rules of Evidence and section 1732 of title 28 of the United States Code, or applicable State law.

(4) Nothing in this subsection shall be interpreted to preclude the admissibility of an optically imaged copy of any document or record in a proceeding outside the scope of this subsection consistent with the Federal Rules of Evidence and section 1732 of title 28 of the United States Code, or applicable State law.

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PROGRAM PARTICIPATION AGREEMENTS

Sec. 487. (a)***

* * * * * * *

(f) Use of Optically Imaged Documents.–In any proceeding with respect to a program or activity under part D of this title, or with respect to a loan made under part B of this title that has been assigned to the Secretary, records maintained in accordance with section 484A may be used as provided in that section.

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BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

PART C–EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

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SEC. 252. ENFORCING PAY-AS-YOU-GO.

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(a)***

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(c) Eliminating a Deficit Increase.–(1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:

(A)***

(B) Second.–If additional reductions in direct spending accounts are required to be made, the maximum reductions permissible under sections 256(b) ([guaranteed] student loans) and 256(c) (foster care and adoption assistance) shall be made.

SEC. 256. EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

(a)***

(b) [Effect of Orders on the Guaranteed Student Loan Program.–] Effect of Orders on Student Loan Programs.–

(1) Federal family education loan program.–(A) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965, as a consequence of an order issued pursuant to section 254, shall be achieved only from loans [described in paragraphs (2) and (3)] described in subparagraphs ***172** (B) and (C) by the application of the measures described in such paragraphs.

[(2)] (B) For any loan made during the period beginning on the date that an order issued under section 254 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of–

[(A)] (i) 0.40 percent, or

[(B)] (ii) the percentage by which the rate specified in such section exceeds 3 percent.

[(3)] (C) For any loan made during the period beginning on the date that an order issued under section 254 takes effect with respect to a fiscal year and ending at the close of such fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(2) Federal direct student loan program.–(A) Any reductions that are required to be achieved from the Federal Direct Student Loan program operated under part D of title IV of the Higher Education Act of 1965 as a consequence of an order issued pursuant to section 254, shall be achieved only by the application of the measures described in subparagraph (B).

(B) For any loan made during the period beginning on the date that an order issued under section 254 takes effect with respect to a fiscal year, and ending at the close of such fiscal year, the loan fee that is authorized to be collected pursuant to section 456(c) of such Act shall be increased by 0.50 percent.

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EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SHORT TITLE AND TABLE OF CONTENTS

Section 1. This Act may be cited as the “Employee Retirement Income Security Act of 1974”.

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TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

TITLE I–PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

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PART 6–CONTINUATION COVERAGE UNDER GROUP HEALTH PLANS

Sec. 601. Plans must provide continuation coverage to certain individuals.

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Sec. 603. Qualifying event.

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Sec. 609. Continued coverage of costs of a pediatric vaccine under group health plans.

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TITLE I–PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B–REGULATORY PROVISIONS

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PART 5–ADMINISTRATION AND ENFORCEMENT

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EFFECT ON OTHER LAWS

Sec. 514. (a) ***

(b)(1) ***

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[(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. S S 393–1 through 393–51).

[(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)–

[(i) any State tax law relating to employee benefit plans, or

[(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

[(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph [January 14, 1983]), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.]

(5)(A)(i) Except as provided in clauses (ii) and (iii), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. S S 393-1 through 393-51).

(ii) Nothing in clause (i) shall be construed to exempt from subsection (a) any State tax law relating to employee benefit plans.

(iii) Notwithstanding clause (i), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may enter into cooperative arrangements under this subparagraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(B)(i) Except as provided in clauses (ii) and (iii), subsection (a) shall not apply to subtitle 2 of title 19 of the Annotated Code of ***174** Maryland (relating to the Health Services Cost Review Commission).

(ii) Nothing in clause (i) shall be construed to exempt from subsection (a)–

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(I) any State tax law relating to employee benefit plans, or

(II) any amendment of the provision referred to in clause (i) enacted on or after May 12, 1993, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(iii) Notwithstanding clause (i), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the provision referred to in clause (i) (as in effect on or after May 12, 1993), but the Secretary may enter into cooperative arrangements under this subparagraph and section 506 with officials of the State of Maryland to assist them in effectuating the policies of such provision which are superseded by such parts 1 and 4 and the preceding sections of this part.

(C)(i) Except as provided in clauses (ii) and (iii), subsection (a) shall not apply to the following provisions of the law of the State of Minnesota:

(I) section 295.52, Minnesota Statutes, as amended in May 1993 by House File 1178 (relating to receipts tax on providers);

(II) section 19 of article 9 of the Minnesota Health Right Act, as amended in May 1993 by House File 1178 (relating to passthrough of 2 percent gross receipts tax on providers); and

(III) subdivision 2 of section 3 of article 1 of such Act, article 7 of such Act, and section 1 of article 3 of Minnesota House File 1178 and section 4 and all that follows through the end of such article 3, as enacted in May 1993 (relating to data collection).

(ii) Nothing in clause (i) shall be construed to exempt from subsection (a)–

(I) any State tax law relating to employee benefit plans (other than a provision described in clause (i)), and

(II) any amendment of any provision referred to in clause (i) enacted on or after May 12, 1993, to the extent it provides for more than the effective administration of such provision as in effect on such date.

(iii) Notwithstanding clause (i), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the provisions described in clause (i) (as in effect on or after May 12, 1993), but the Secretary may enter into cooperative arrangements under this subparagraph and section 506 with officials of the State of Minnesota to assist them in effectuating the policies of such provisions which are superseded by such parts 1 and 4 and the preceding sections of this part.

(D)(i) Except as provided in clauses (ii), (iv), (v), and (vii), subsection (a) shall not apply to the following provisions of the law of the State of New York:

(I) subdivisions 1(b) and 4(e) of section 2807-c of the Public Health Law (relating to 13 percent surcharge);

(II) subdivision 1(c) of section 2807-c of the Public Health Law (relating to uniform hospital charges);

***175** (III) subdivision 2-a of section 2807-c of the Public Health Law (relating to the variable surcharge for HMOs);

(IV) subdivision 14 of section 2807-c of the Public Health Law (relating to basic percentage allowances for bad debt and charity care);

(V) subdivision 14-b of section 2807-c of the Public Health Law (relating to health care services allowances);

(VI) subdivision 14-c of section 2807-c of the Public Health Law (relating to further allowances for financially distressed hospitals); and

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(VII) section 18 of chapter 266 of the laws of 1986, as amended (relating to excess malpractice insurance adjustments).

(ii) Except as provided in clause (iii), nothing in clause (i) shall be construed to exempt from subsection (a)–

(I) any State tax law relating to employee benefit plans, or

(II) any provision referred to in clause (i) to the extent that any law of the State of New York appropriates amounts based on amounts collected by the State under such provision for any purpose other than carrying out the programs established under the provisions described in clause (i).

(iii) Notwithstanding clause (ii), subsection (a) shall not apply to any provision of the law of the State of New York to the extent that such provision constitutes–

(I) an HMO surcharge of the type provided for under subdivision 2-a of such section 2807-c (as in effect on February 2, 1993), or

(II) an allowance, of the type provided for under the provisions referred to in clause (i) (as so in effect), for bad debts, charity care, health care services, or excess malpractice insurance,

but only if the law of such State appropriates amounts based on and equivalent to amounts collected by the State under such provision solely for the purpose of carrying out one or more programs established under the provisions described in clause (i).

(iv) Subsection (a) shall apply to any provision of the law of the State of New York to the extent that such provision constitutes a surcharge of the type provided for under subdivisions 1(b) and 4(e) of section 2807-c of the Public Health Law of the State of New York (as in effect on February 2, 1993) unless such provision provides for use of amounts collected under such provision solely for the purpose of carrying out one or more programs established under the provisions described in clause (i).

(v) Nothing in clause (i) shall be construed to exempt from subsection (a) any amendment of any provision referred to in clause (i) enacted on or after February 2, 1993, to the extent it provides for more than the effective administration of such provisions as in effect on such date, unless such amendment constitutes only a change in the methodology of determining payments to hospitals and would result in–

(I) a surcharge described in clause (iii)(I) of not more than 9 percent with respect to which the requirements of clause (iii) are met,

(II) an allowance described in clause (iii)(II) which does not exceed in the aggregate a Statewide average of not more than ***176** 10 percent and with respect to which the requirements of clause (iii) are met, or

(III) a surcharge described in clause (iv) of not more than 13 percent with respect to which the requirements of clause (iv) are met.

(vi) Subsection (a) shall not apply to any amendment to chapter 2 of the laws of 1988 of the State of New York, as amended, to the extent that such amendment extends the period for which the provisions referred to in clause (i) are in effect.

(vii) Notwithstanding clause (i), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the provisions described in clause (i) (as in effect on or after February 2, 1993), but the Secretary may enter into cooperative arrangements under this subparagraph and section 506 with officials of the State of New York to assist them in effectuating the policies of such provisions which are superseded by such parts 1 and 4 and the preceding sections of this part.

(viii) The provisions of this subparagraph shall be effective as of February 2, 1993.

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(E) This paragraph shall cease to be effective as of May 12, 1995.

* * * * * * *

[(8) Subsection (a) of this section shall not apply to any State law mandating that an employee benefit plan not include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan, because that individual is provided, or is eligible for, benefits or services pursuant to a plan under title XIX of the Social Security Act [(42 U.S.C. 1396 et seq.)], to the extent such law is necessary for the State to be eligible to receive reimbursement under title XIX of that Act.]

(8)(A) Subsection (a) of this section shall not apply to any State law to the extent necessary to permit the State to comply with the following requirements for the receipt of Federal financial assistance under title XIX of the Social Security Act:

(i) subparagraphs (A), (B), and (H) of section 1902(a)(25) of such Act (relating to third-party liability) and section 1903(o) of such Act (relating to medicaid as secondary payor), as in effect on October 1, 1993; and

(ii) sections 1902(a)(45) and 1912 of such Act (relating to assignment of rights of payment), as in effect on May 12, 1993.

(B) Paragraph (2)(B) shall not apply to any State law to the extent necessary to permit the compliance of the State with any of the requirements described in subparagraph (A).

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PART 6–CONTINUATION COVERAGE UNDER

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***177** SEC. 609. CONTINUED COVERAGE OF COSTS OF A PEDIATRIC VACCINE UNDER GROUP HEALTH PLANS.

A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) below the coverage it provided as of May 1, 1993.

* * * * * * *

****506*178** SUPPLEMENTAL VIEWS OF REPRESENTATIVES BOEHNER, ARMEY, AND BALLENGER

We believe the direct lending proposal is a solution in search of a problem. The student loan program is currently providing funds to students who attend college at unprecedented rates. In 1991, more than 4.8 million students and their families received almost $13 billion in Federal guaranteed loans. This is all being accomplished in an efficient and cost-effective way for both the government and the private sector.

Despite this fact, Congress is about to replace the current student loan program with direct government loans–in essence substituting the Federal government for the private sector. The support rests on two arguments: direct lending will decrease costs for the Federal government while at the same time lessening the complexity of the program. We seriously question whether a direct student loan program will achieve these goals.

The General Accounting Office (GAO) contends that the main source of savings for the Federal government is supposed to come from the elimination of subsidies to private lenders. However, GAO dismissed credible claims that costs and liabilities would be passed onto educational institutions, which are already strapped for operating capital. The GAO also understates the administrative costs to the U.S. Department of Education. They do not take into account the various administrative costs incurred by private lenders and how the Department would have to incur these same costs.

In sharp contrast to the GAO findings, a recent Congressional Research Service (CRS) report casts serious doubts on the

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plausibility of a direct loan system. CRS concluded there would be no savings under a direct loan program. Any savings would be offset by reduced private sector income. Direct lending would increase the Federal debt and reduce savings if the government is unable to duplicate the administrative efficiency of the private sector. CRS estimates that the Federal government could not achieve this duplication because we would be replacing a competitive environment with a government monopoly. The reason the private sector has achieved this level of efficiency is because market forces have driven down the servicing costs of a loan. Most ominously, CRS concluded that savings projections are "nothing more than the failure of Federal bookkeeping to record outlays for taxpayers' absorption of risks."

The direct loan program will not generate any savings, because the Federal government will have to borrow the capital to extend to students, thereby increasing the national debt. The Federal government does not have the capital to extend $13 billion worth of loans a year. Therefore, not only will the Federal government (and the taxpayers) have to borrow the money, but it will also have to pay the corresponding interest. In addition, we have never known ***179** a government bureaucracy that could provide services in a more cost-effective manner than the private sector. The supposed savings ****507** from the elimination of subsidies would quickly disappear within the Federal education bureaucracy.

Similarly, the administrative complexity will increase, not decrease, under the direct loan program. The Department of Education admitted last year during the reauthorization of the Higher Education Act that they do not have the capacity to administer a direct loan program. Furthermore, GAO issued a report last year criticizing the Department of Education for "serious problems in the Department's financial and management systems." GAO advised the Department to "move cautiously toward implementing the direct student loan demonstration program." It would seem that the Department of Education should first correct its internal administrative problem before attempting to take on a direct loan program.

We are concerned that Congress will ask the Federal government and post-secondary institutions to perform functions for which they are not suited. Can we realistically expect to replace the private sector's expertise and experience in loan origination, servicing, collection and counseling? Should we expect the Federal government and post-secondary institutions to perform these functions? Both questions must be answered in the negative. The government should not be in the business of being a bank, and schools should be concerned only with the education of their students.

If the Department of Education or colleges are incapable of administering this program, we fear that direct lending will hurt students dependent on financial aid. Schools will have to raise tuition and fees in order to cover the additional costs of administering this program. If the Federal government doesn't come through in administering the program in an efficient manner, we have no doubt there will be additional costs being passed onto the students.

There are problems with the current student loan system. But these problems can be fixed. It does not require a radical change of course, especially one that is fraught with as many problems as the direct lending approach. The Federal government must refrain from doing something that the private sector can do better. Despite the best intentions of the Clinton Administration and Congress, there is ample evidence that the student loan program will suffer under direct lending. This proposal will hurt those it is supposed to help–the students. We are convinced that this is not the proper means to improve the delivery of student financial aid.

***180** MINORITY DISSENTING VIEWS

The amendments contained in these Committee Recommendations reflect the eighth time that the Committee on Education and Labor has enacted legislation through the budget reconciliation process since 1981. In each of the previous seven instances, this Committee has questioned the process and suggested that setting policy in a budget reconciliation context results in bad policy. On much of the legislation enacted through the reconciliation process, we agreed strongly with this assessment.

The two biggest cost saving provisions we have enacted through these past reconciliations are the limitation of high default rate ****508** schools from participation in the program and the enactment of the 5 percent loan origination fee. Both of these provisions resulted in a reduction in the cost of the student loan program, but are not generally considered sound policy. Nobody on this Committee is happy about students having to pay a five percent loan origination fee on their student loans. Similarly, the use of a cohort default rate to exclude schools from participating in the program is widely viewed as a less than perfect or fair mechanism.

We are in fundamental disagreement with the provisions of these committee recommendations that replace the current student loan program with one directly funded by the federal government for several reasons. First, these provisions make major policy changes outside of the ordinary reauthorization process, changes that could not be adopted through last year's reauthorization of the Higher Education Act due to lack of support.

Second, these recommendations propose that the Committee abandon the direct loan demonstration program enacted into law only 10 months ago before it even begins. Until direct loans are tested, they are just a concept. Given the magnitude of our student loan program, we believe that it makes far more sense to test direct loans first, to make sure that it lives up to its promises.

Third, the recommendations contain very little detail. The legislation, which essentially mirrors a proposal submitted by the Administration, is essentially devoid of specifics and instead relies on the broad grants of discretion to the Secretary of Education leaving many aspects of the new program unclear.

Fourth, every Member of this Committee knows that there are very serious questions about the savings estimates associated with direct loans. CBO Director, Robert Reischauer, stated in a recent letter to Representative Goodling that because of accounting rules under Credit Reform, "the administrative costs associated with the Administration's proposed direct loan program are not evenly divided over the life of the loan. Rather, the administrative costs are disproportionately associated with the collection of interest and principal payments and this collection does not begin until the student has left school, often several years after receiving the loan. ***181** For this reason, the administrative costs included in [CBO's] estimate for the first years of a direct loan program are much lower than the full administrative costs of a direct loan program."

Fifth, we have serious doubts over whether or not the Department of Education can efficiently manage this program. If they fail to run it proprly–and all of the evidence suggests that the Department will not suddenly develop the administrative finesse that they have lacked for so long–it will be students and schools that will suffer.

And finally, despite the claims of some direct lending proponents who would have us believe otherwise, there is far from uniform support on our nation's campuses for a move to direct lending until it can be carefully evaluated. There is a great deal of anxiety among institutions in the districts we represent that full implementation of direct loans does not allow for an honest assessment of the feasibility of direct loans or a financial safety net for students during the implementation period.

****509** We believe that savings, as well as dramatic program simplification, can be found in the current program while proceeding with the demonstration project. We will continue, through this process, to work toward achieving real program savings in the guaranteed student loan program while giving the direct loan pilot a full and complete test. If, after the demonstration is underway, and there is evidence that direct loans live up to their promise of a simpler, more cost effective mechanism for delivery of student loans, we agree that a complete conversion from direct to guaranteed loans should be considered.

Bill Goodling.
Marge Roukema.
Steve Gunderson.
Harris W. Fawell.
Susan Molinari.
Bill E. Barrett.
Randy Cunningham.
Pete Hoekstra.
Buck McKeon.
Dan Miller.

***182** MINORITY VIEWS

After several years of not having to confront serious employee benefit policy matters which are not germane to budget reconciliation, we are again compelled to express our reservations in regard to the extraneous ERISA amendments included in the Committee's budget reconciliation instructions.

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The ERISA changes in section 4202 and 4203 of Subtitle C are contentious and involve ERISA and health policy matters which do not appear to be legitimate issues for inclusion in budget reconciliation. These provisions include several significant changes to ERISA which will affect the private health plans now operating under our voluntary employment-based system.

We are concerned that important health policy issues, whether involving a continuation of coverage for immunization or any other form of health benefit, be fully debated and considered in the regular order.

Also falling into this category are proposed exemptions from ERISA preemption for various portions of the health care laws of four states–Hawaii, Maryland, Minnesota, and New York. The role that the states should play in achieving overall health care reform is an extremely important subject to be resolved in the context of the national debate. Even though a two-year "sunset" would apply to these four exceptions, the substance and merits of these proposals should be considered beyond a single perfunctory hearing.

Although we understand there are jurisdictional concerns involved with these two sections, we consider the subject matter too ****510** important not to register our reservations regarding these non-germane changes to ERISA.

Bill Goodling.
Marge Roukema.
Steve Gunderson.
Dick Armey.
Harris W. Fawell.
Cass Ballenger.
Bill E. Barrett.
John A. Boehner.
Randy Cunningham.
Pete Hoekstra.
Dan Miller.

***183** ADDITIONAL VIEWS

This committee print includes an amendment which expresses the sense of the Education and Labor Committee that although we do not have jurisdiction to report amendments to the Internal Revenue Code establishing collection of income dependent student loans by the IRS, the committee supports such provisions, together with accompanying amendments to the Higher Education Act, along the lines of those contained in, HR 2073 Income Dependent Education Assistance Act (IDEA for short).

We support the effort at student loan reform contained in this committee recommendation; however, we believe that more details are needed, and that inevitably we will need to enact at least repayment details like those in the IDEA act. But more importantly, we think that we should be bolder and move further in the direction the President has outlined. If we are willing to lift our sights and follow some of the President's ideas to their logical conclusion, we can achieve far more than is contemplated in this bill, including satisfying some of the concerns that have been expressed by those individuals who have opposed direct loans.

One of the main principles of IDEA is that every student loan borrower ought to repay each year at least what he or she can afford based on current income. We should certainly allow anyone to pay more than that, in order to finish repaying more quickly on a straight line amortization basis or any variation thereon, but at the very least the borrower should pay the income dependent minimum. We implicitly adopted that principle in the Higher Education Act reauthorization last year, and it's a principle we can all support.

But once we adopt that principle, it makes sense to enforce it for everyone by collecting the loans as income taxes through the IRS–especially because one main purpose of most education investments in the first place is to achieve higher later income, and because we can still allow in such a structure any more expedited repayment options that the borrower might wish.

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****511** Once we have IRS collection, we have a ready-made basis for assessing the need for loan subsidies on a different basis than we do today–namely based on the wherewithal to repay, which is post school income, rather than on family circumstances up front, which is more appropriate for grants.

In turn, if we eliminate the needs analysis up front, there no longer is any need to provide different programs for different classes of students, and we can collapse all the major student loan programs into one, providing dramatic simplification–and extremely simple loan origination.

Similarly, with minimum repayments based on income, loan deferment and forgiveness provisions are automatic and universal, ***184** and all periods of national service-type employment are accommodated, with no fuss or paperwork.

Even more significant, in such a world we can largely put to rest the whole issue of defaults which has plagued these programs like no other problem. We can eliminate both the reason to default and the opportunity, and reap enormous savings in a way that the committee recommendations do not yet promise.

Finally, if we undertake these kinds of reforms, the fact that the loans are direct rather than guaranteed, which is another major source of savings, becomes more a byproduct of the other reforms than the major reason for those reforms. With servicing through the tax system, a simple sign-up for loan origination, dramatic overall simplification, and no risk-bearing by the private sector, there is simply no longer any useful function for private parties to perform.

We believe we have a major opportunity here for dramatic streamlining, providing a much better deal for students, and at the same time saving much more money. This is in fact a classic opportunity for "reinventing government." We hope that inclusion of this "sense of the committee" resolution lifts our sights and signals a willingness to move towards real student loan reform.

Tom Petri.
Steve Gunderson.

***185** TITLE V–COMMITTEE ON ENERGY AND COMMERCE

House of Representatives,
Committee on Energy and Commerce,
Washington, DC, May 14, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

Dear Mr. Chairman: I am transmitting herewith the recommendations of the Committee on Energy and Commerce for ****512** changes in laws within its jurisdiction pursuant to section 310 of the Congressional Budget Act of 1974 and section 7(c)(5) of H. Con. Res. 64, the Concurrent Resolution on the Budget–Fiscal Years 1994–1998.

The recommendations are embodied in a series of Committee prints adopted by the Committee on May 11, 1993. Also enclosed is accompanying report language and Congressional Budget Office cost estimates.

The enclosed recommendations, when combined with non-duplicative savings achieved in Medicare by the Committee on Ways and Means, will meet or exceed budget resolution targets for this Committee.

Thank you for your cooperation in these matters.

Sincerely,

John D. Dingell,
Chairman.

Subtitles A and B–Medicare, Medicaid, and Other Health Care Provisions

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PURPOSE AND SUMMARY

The Committee bill relating to health consists of two subtitles: subtitle A, relating to Medicare and Regulation of Medicare Supplemental Insurance Policies; and subtitle B, relating to Medicaid and Other Health Care Provisions. Subtitle B, chapter 2 includes provisions relating to Universal Access to Childhood Immunizations.

The purpose of these subtitles is to make revisions in Part B of the Medicare program and in the Medicaid program, in accordance with the reconciliation instructions to the Committee on Energy and Commerce contained in the Current Resolution on the Budget–Fiscal Year 1994. These instructions assume $48.3 billion in reductions in Federal outlays under the Medicare program and $7.8 billion in reductions in Federal outlays under the Medicaid program over the next five years.

In subtitle A, relating to the Medicare Program, chapter 1 includes provisions related to Part B of Medicare. Subchapter A contains provisions to reduce program outlays for physicians' services ***186** and to further revise payment policies for physicians' services. Subchapter B contains provisions that reduce Medicare outlays for outpatient hospital services and ambulatory surgery services. Subchapter C includes changes in the payment policies for durable medical equipment that reduce program outlays and other policy revisions intended to eliminate program fraud and abuse. Subchapter D provides for an extension of the current policy for determining the Part B premium for beneficiaries who have elected enrollment. Subchapter E contains other provisions that reduce payments for clinical laboratory services and provide for extension of certain demonstration projects and other miscellaneous program policies.

****513** Chapter 2 contains a number of provisions relating to parts A and B of the Medicare program. Included in this chapter are reductions in payments to certain home health agencies, revisions to the Medicare secondary payer policy, expansion of the prohibition on physician self-referrals, and other program policy modifications.

Chapter 3 includes a number of revisions and corrections to the provisions relating to Medicare Supplemental Insurance Policies.

In subtitle B, relating to Medicaid and other Health Care Provisions, chapter 1 relates to Medicaid. Subchapter A contains provisions to reduce Federal Medicaid outlays. Part 1 repeals the personal care services mandate scheduled to go into effect on October 1, 1994. Part 2 authorizes States to establish prescription drug formularies. Part 3 tightens restrictions on divestiture of assets in order to qualify for nursing home care at Medicaid expense and requires the recovery of funds paid by Medicaid for long-term care services from the estates of deceased beneficiaries. Part 4 establishes mechanisms to improve the identification and collection of payments from third parties that are liable for care furnished to Medicaid beneficiaries. Part 5 assures that payment adjustments made by State Medicaid programs to State or local "disproportionate share" hospitals are appropriate.

Subchapter B contains miscellaneous Medicaid provisions. Part 1 contains general anti-fraud and abuse provisions. Part 2 contains anti-fraud and abuse and other provisions relating to Medicaid managed care. Part 3 contains provisions relating to the provision of emergency services to undocumented aliens. Part 4 contains miscellaneous provisions, including optional coverage of outpatient services for low-income individuals infected with tuberculosis. Subchapter C contains miscellaneous and technical corrections relating to OBRA 1990. Chapter 2 contains provisions related to universal access to childhood vaccinations.

BACKGROUND AND NEED FOR THE LEGISLATION

The Concurrent Resolution on the Budget–Fiscal Year 1994 (H.Con.Res. 64, adopted April 1, 1993) provides for $48.3 billion in outlay reductions in the Medicare program over the period FY 1994 through FY 1998. The Budget Resolution assigns this savings target to both this Committee and the Committee on Ways and Means, without a specific allocation of the amount of these savings to be achieved from Part A and Part B of the program. Part A of Medicare is within the jurisdiction of the Committee on Ways and ***187** Means, while Part B of the program is within the jurisdiction of both Committees.

Therefore, this Committee does not have a specific target for the Medicare savings it must achieve. The net savings from this Committee and from the Committee on Ways and Means with respect to the Medicare program are consolidated to determine

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whether the Budget Resolution target has been met. As a general guide, the Committee has followed the recommendations of the President's budget with respect to outlay reductions in Medicare in each of the fiscal years covered by the Budget Resolution. However, the Committee ****514** has modified some of the President's proposals, and included new proposals to distribute the burden of deficit reduction fairly and to ensure the accessibility and quality of services for Medicare beneficiaries.

The Committee's bill will result in Medicare outlay reductions of $28.1 billion through the 5 fiscal years covered by the Budget Resolution. Of that amount, $20.9 billion of the savings results from changes to payment policies under Part B and $7.2 billion comes from changes to policies effecting Parts A and B. The Committee's bill achieves these savings primarily through reductions in payments for physician services and outpatient services, including payments for clinical laboratory services and durable medical equipment items. There are also significant savings from revisions to the Medicare secondary payer policy and payments to certain home health agencies.

The Committee recognizes that it will be considering the President's health reform proposal later this year, and that this legislation will significantly impact the Medicare and Medicaid programs. As a result, the Committee has not recommended any fundamental changes in the benefits or eligibility of these programs. In the context of health reform legislation the Committee anticipates the need for program improvements and coordination, particularly with respect to the application of broad-based cost containment policies and benefit standards.

The Budget Resolution also assumes reductions in Federal Medicaid outlays of $7.813 billion over the period FY 1994 through FY 1998. The Committee bill achieves these savings primarily by repealing a mandate that States cover personal care services; by allowing States to limit the coverage of prescription drugs through the use of formularies; by tightening restrictions on the transfer of assets to qualify for Medicaid nursing home care; by improving the identification and collection of third party payments; and by limiting Medicaid payment adjustments to State or local "disproportionate share" hospitals to the cost of serving Medicaid and uninsured patients at those facilities. The National Childhood Immunization program established by the Committee bill would also result in a significant reduction in costs to the Medicaid program.

The savings achieved under the Committee's recommendations would exceed the Budget Resolution target over the next five years. The Committee is recommending that approximately a portion of these savings be invested in needed program initiatives; the remainder would reduce the deficit.

***188** HEARINGS

The Committee's Subcommitee on Health and the Environment held two days of hearings on Medicare and Medicaid Budget Reconciliation on March 31 and April 1, 1993, and heard testimony from 27 witnesses, including the Health Care Financing Administration, the Physician Payment Review Commission, representatives ****515** of 4 medical associations, and 21 other groups. On April 21, 1993, the Subcommittee on Health and the Environment held joint hearings with the Senate Committee on Labor and Human Resources on a related bill on Childhood Immunization H.R. 1640. Testimony was received from 14 witnesses, representing 13 organizations; witnesses included a Member of Congress and the Secretary of Health and Human Services.

COMMITTEE CONSIDERATION

On May 5 and 6, 1993, the Subcommittee on Health and the Environment met in open session and ordered reported the Committee Print, as amended, by a voice vote, a quorum being present. On May 11, 1993, the Committee met in open session and ordered reported the Committee Print, with amendment, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

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COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee's cost estimate is identical to that found in the estimate of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The comprehensive letter of the Congressional Budget Office is found at the conclusion of the report on this Title of the bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to the Rules of the House of Representatives, the Committee believes that this bill will reduce the deficit and will not increase inflation.

****516*189** SECTION-BY-SECTION ANALYSIS

SUBTITLE A–MEDICARE PROGRAM

Chapter 1–Provisions Relating to Part B

Subchapter A–Physicians' Services

Sec. 5001. Reduction in default update for conversion factor for 1994

Unless Congress otherwise specifies, payments for physicians' services under the Medicare Fee Schedule are updated annually on the basis of a formula specified in the law. The formula, referred to as the default update, utilizes the Medicare Economic Index (MEI) adjusted by the percentage difference between the actual increase in Medicare outlays for physicians' services and the applicable Medicare Volume Performance Standard.

This section of the Committee bill provides a reduction in the formula update. Specifically, the default update otherwise applicable to all non-surgical services for calendar year 1994, except primary care services, is reduced by 2 percentage points, and the update for surgical services is reduced by 3 percentage points.

Sec. 5002. Reduction in performance standard rate of increase and increase in maximum reduction permitted in default update

Current law requires the Secretary to establish for each fiscal year a performance standard rate of increase for all physicians' services. The performance standard rate of increase is determined by a formula that takes account of inflation, changes in program enrollment, historic average increases in the volume and intensity of services, and changes in law or regulations, reduced by a specified performance standard. For fiscal year 1993, the performance standard is 2 percentage points.

The Committee bill increases the performance standard for fiscal year 1994 to 3 and a half percentage points, and to 4 percentage points for each subsequent fiscal year. In addition, this section of the Committee bill increases the allowable

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reduction in the default update formula related to the Medicare Volume Performance Standard from 3 percentage points in calendar year 1994 to 5 percentage points in calendar year 1995 and any succeeding year.

Sec. 5003. Classification of primary care services as a separate category of services

The Secretary is required to establish separate Medicare Volume Performance Standards for two categories of physicians' services. Currently, there are separate volume performance standards for surgical and non-surgical services.

Effective for Fiscal Year 1994, the Committee bill directs the Secretary to establish a separate category for primary care services (as defined in Section 1842(i)(4)) with respect to the application of a volume performance standard. The Committee bill applies the default update formula to the new primary care services category for calendar year 1996 and all succeeding years.

****517*190** Sec. 5004. Phased-in reduction in practice expense relative value units for certain services

Under current law Medicare payments for physicians' services are based on three components: (1) a work component; (2) a practice expense component; and (3) a malpractice component. Relative values are determined for each component and combined into a single relative value for each service. While the relative values for the work component of physicians' services are based on resource costs, relative values for practice and malpractice expenses are based on historic charges.

The Committee bill directs the Secretary to phase-in reductions to the practice expense relative value units (RVUs) for certain services. Specifically, for a given service, practice cost relative value units that exceed the number of work relative value units by more than 110 percent would be reduced over a four year period. Beginning in 1994, 25 percent of the difference between practice cost RVUs and work RVUs would be eliminated. The remaining difference would be eliminated in 25 percent increments over the succeeding three years. In no case would practice cost RVUs for any service be reduced below 110 percent of the work RVUs.

Reductions in practice cost RVUs would not be applied to services without a work component, to anesthesia and radiology services or to services provided in an office setting at least 75 percent of the time.

The Secretary is required to submit a report to Congress on a methodology for implementing resource-based practice expense relative value units for all physicians' services by June 30, 1996. Beginning January 1, 1997, payments for physicians' services would incorporate the revised methodology for establishing resource-based practice expense relative value units.

Sec. 5005. Limitation on payment for the anesthesia care team

The majority of anesthesia services in the United States are provided by anesthesia care teams consisting of an anesthesiologist supervising two or more certified registered nurse anesthetists (CRNAs). Under current law, when anesthesia services are provided by a team, Medicare payments to the supervising anesthesiologist are based on reduced base and time units. Payments to the CRNA are based on a separate fee schedule with its own dollar conversion factor.

As a result of this payment policy, payments for a procedure to an anesthesia care team are significantly higher than payment would be to a single anesthesiologist. According to the Physician Payment Review Commission (PPRC), in most payment areas, payments to a team consisting of one anesthesiologist supervising two CRNAs are 30 percent to 35 percent higher than payments to a single anesthesiologist.

The Committee bill revises the payment policy for anesthesia care teams. Effective for anesthesia services provided on or after January 1, 1994, payments would be limited to 120 percent of the fee that would be made to a single anesthesiologist in the same locality. This anesthesia care team fee for a procedure would be equally divided between the supervising anesthesiologist and the CRNA. In each of the succeeding four calendar years the anesthesia ****518*191** care team payment would be reduced by 5 percent, so that in 1998, payments to the anesthesia care team would be limited to 100 percent of the fee for a single anesthesiologist in the same locality.

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Sec. 5006. Basing payments for anesthesia services on actual time

Under current Medicare policy, payments for anesthesia services for both anesthesiologists and certified registered nurse anesthetists (CRNAs) are based, in part, on time intervals reflecting the actual time of the anesthesia procedure. The Health Care Financing Administration has in the past indicated its intention to substitute average time of procedures for actual time intervals.

The Committee bill directs the Secretary to continue using actual time in the determination of anesthesia payments.

Sec. 5007. Separate payments for interpretation of electrocardiograms

Under current law, payments for the interpretation of electrocardiograms (EKGs) are included in the payments for physician visits and consultations. No separate payment is made for the professional interpretation of an EKG.

The Committee bill repeals the prohibition on separate billing for the interpretation of EKGs effective for services furnished on or after January 1, 1994. To ensure budget neutrality, relative value units for visit and consultation services related to the provision of EKGs are removed, and further across-the-board adjustments to relative value units of all services and to average historical payment amounts are made.

Sec. 5008. Payments for new physicians and practitioners

New physicians and practitioners receive reduced payments from Medicare during their first four years of practice. Payments are 80 percent of the amount otherwise recognized during the first year of practice, 85 percent during the second year, 90 percent during the third year, and 95 percent during the fourth year. The reductions apply to payments under the Medicare Fee Schedule, prevailing charges, or other fee schedule payment amounts.

The Committee bill repeals these payment reductions for new physicians and practitioners, effective for services furnished on or after January 1, 1994. Adjustments to the relative value units of all other physician services and to the average historical payment amount are required to assure budget neutrality during the transition to the full fee schedule. In addition, separate adjustments are made to payments to non-physician practitioners to assure budget neutrality.

Sec. 5009. Geographic adjustment factors for medicare physicians' services

Under the Medicare Fee Schedule, payments to physicians are adjusted by a geographic cost of practice index (GPCI) which is designed to measure local variations in the costs of practice. Concerns have been raised about the timeliness and representativeness of the data used for such adjustments.

****519*192** The Committee bill directs the Secretary to consult with representatives of physicians in carrying out the requirements to review the composition of the index and the index values used to adjust fee schedule payments. This review would be required not less often than every three years with the first such review completed by January 1, 1995.

The Committee recognizes the importance of accurate and timely data in making geographic cost of practice adjustments to the fee schedule. The current GPCI is based on the best available data that is in some cases over a decade old. The Committee observes that medical societies can be a resource in identifying available and comparable data for use in determining these important adjustments. The Committee expects that where it is feasible the Secretary will revise the GPCI to incorporate the most recent and appropriate data to assure that payments made under the fee schedule fairly reflect geographic differences in the costs associated with the provision of physician services.

This section of the Committee bill also directs the Secretary to use the most recent available data relating to physician practice expenses, malpractice premium expenses, and physician work in establishing the GPCI.

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Finally, the Committee bill also requires the Secretary to study and report on: (1) the data necessary to review and revise the GPCI indices, including the shares allocated to physicians' work effort, practice expenses; the weights assigned to the input components of such shares; and the index values assigned to such components; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways of addressing such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every 3 years; and (4) the costs of developing more accurate and timely data sources.

Sec. 5010. Extra-billing limits

OBRA 1989 established limits on the amount above the Medicare approved payment amount nonparticipating physicians may charge Medicare beneficiaries. OBRA 1989 permitted the Secretary to impose sanctions on physicians who knowingly and willfully bill above the limiting charge on a repeated basis. However, the law was interpreted such that physicians were not specifically prohibited from billing beneficiaries more than the limiting charge or required to make refunds to beneficiaries for extra-billings under this interpretation. Beneficiaries were not absolved from liability for these excess billing amounts.

Current law does not specifically apply these extra-billing limits to no-physician services furnished under the Medicare Fee Schedule, nor does it make nonparticipating suppliers or other non-physician practitioners subject to the 95 percent reduction of the fee schedule amounts that otherwise apply to nonparticipating physicians. There may also be some ambiguity in current law regarding the application of mandatory assignment rules for certain non-physician practitioners. Finally, current law does not require pre-payment screening of unassigned claims to determine whether the charge exceeds the limiting charge, nor is there any explicit requirement ****520*193** to notify the beneficiary if a physician has violated the limiting charge policy.

The Committee bill includes several modifications related to these policies. First, subsection (a) revises the application of the limiting charge policy with respect to claims submitted on a non-assignment basis. The provision explicitly prohibits physician billing in excess of the limiting charge, eliminates any beneficiary liability for amounts in excess of the limiting charge, and requires physician refunds or credits to any outstanding patient balance within 30 days. Physicians who knowingly and willfully violate these billing limits on a repeated basis may be excluded from the Medicare program and be assessed civil monetary penalties. This subsection also clarifies the intent of current law to apply the limiting charge policy to services provided by nonparticipating suppliers or other persons submitting claims for payment under the fee schedule. The effect of this clarification is to ensure that payments to suppliers and other persons billing under the fee schedule are subject to the 5 percent reduction applied to claims submitted on a non-assigned basis.

Subsection (b) of the Committee bill further clarifies current law with respect to the requirement that all claims for covered services by physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse mid-wives, clinical psychologists or social workers must be submitted on an assignment-related basis. Charges in excess of the allowable deductible or coinsurance amounts are prohibited and subject to sanctions in the same manner prescribed for physicians. There is no beneficiary liability for charges in excess of the Medicare limiting charge.

Subsection (c) sets forth requirements for Medicare carriers to provide limiting charge information on the explanation of benefits (EOB) form furnished to beneficiaries, and requires carriers to screen 100 percent of unassigned claims by physicians prior to making payments to determine whether the amount billed exceeds the limiting charge.

The effective date for the provisions in subsection (a) is the date of enactment and the effective date for subsections (b) and (c) is January 1, 1994.

Sec. 5011. Relative values for pediatric services

This section of the Committee bill directs the Secretary to conduct a study of the relative values for pediatric services and to submit to Congress a report by July 1, 1994 on the study and any recommendations regarding needed changes in coding or other payment policies to ensure that payments for pediatric services reflect the resources required to provide these services. In conducting this study, the Secretary is directed to consult with pediatricians, other physicians, and physical and

occupational therapists.

Sec. 5012. Antigens under physician fee schedule

The Committee bill clarifies coverages of antigens prepared by a physician under the fee schedule for physicians' services, effective for services furnished on or after January 1, 1994.

****521*194** Sec. 5013. Administration of claims relating to physicians' services

Subsection (a) of the Committee bill prohibits the Secretary from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for requesting a unique identifying number, or for responding to inquiries concerning the status of pending claims.

Subsection (b) clarifies the conditions under which the Secretary can recognize substitute billing arrangements between two physicians. Such arrangements must either be informal, reciprocal agreements or per diem or other fee-for-time agreements. The duration of such arrangements is limited to 60 continuous days, and claims for services provided pursuant to such agreements must include the unique identifying number of both physicians. These requirements are effective for services provided under such arrangements 60 days after the date of enactment of this provision.

Sec. 5014. Miscellaneous and technical corrections

The Committee bill includes a number of technical corrections to provisions included in OBRA 1990.

Subchapter B–Outpatient Hospital Services and Ambulatory Surgical Services

Sec. 5021. Extension of 10 percent reduction in payments for capital-related costs of outpatient hospital services

Under current law, Medicare pays the capital costs of hospitals allocated to outpatient departments on the basis of reasonable cost principles, subject to a 10 percent reduction through fiscal year 1995. Sole community hospitals and primary care hospitals are exempt from these reductions.

The Committee bill extends the 10 percent reduction for such hospital outpatient capital payments through fiscal year 1998.

Sec. 5022. Extension of current reduction in payments for other costs of outpatient hospital services

Under current law, Medicare payments for hospital outpatient services made on a reasonable cost basis and the cost portion of outpatient services paid on the basis of a blended amount are both reduced by 5.8 percent through fiscal year 1995.

The Committee bill extends the 5.8 percent reduction in such payments through fiscal year 1998.

Sec. 5023. 1-year freeze in ambulatory surgery rates

Under current law, Medicare payments for ambulatory surgery services provided in free-standing ambulatory surgery centers are made on the basis of prospectively determined rates. Such payment rates are updated annually by the Secretary.

The Committee bill suspends the update to ambulatory surgery payments for fiscal year 1994.

Sec. 5024. Eye or eye and ear hospitals

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Under current law, certain eye or eye and ear hospitals are eligible for payment under a blended rate for ambulatory surgery services 75 percent of which is based on the hospital's costs and 25 percent ****522*195** of which is based on the rate paid to free-standing ambulatory surgery centers.

The Committee bill extends eligibility for this special blended payment rate to hospitals that otherwise meet the criteria of current law, but on October 1, 1987, operated as a physically separate or distinct eye and ear unit of a general acute care hospital which has since discontinued its other acute care operations.

Sec. 5025. Extension of cap on payments for intraocular lenses

OBRA 1990 established a payment limit of $200 for intraocular lenses inserted during 1991 and 1992.

The Committee bill extends the $200 payment limit for 1993 and 1994.

Sec. 5026. Miscellaneous and technical corrections

The Committee bill includes a number of technical corrections to provisions in OBRA 1990 related to hospital outpatient services and ambulatory surgical services.

Subchapter C–Durable Medical Equipment

Sec. 5031. Revisions to payments rules for durable medical equipment

Under current law, payments for covered items of durable medical equipment are made on the basis of regional fee schedules that are subject to a national cap based on the weighted national average of local fee schedule amounts.

The Committee bill includes a revised limitation on the applicable fee schedule amounts for each type of covered item of durable medical equipment. Effective for payments beginning in fiscal year 1994, the national cap for these covered items is based on the national median of all local payment amounts. A similar national cap based on the national median of local fee amounts is imposed on payments for covered prosthetic and orthotic items.

Sec. 5032. Payment for parenteral and enteral nutrients, supplies, and equipment during 1994

Payments for parenteral and enteral nutrients, supplies, and equipment are made on the basis of reasonable charges, updated annually by the CPI–U.

The Committee bill includes a freeze on payments for these items at the payment levels approved for 1993 during fiscal year 1994.

Sec. 5033. Treatment of nebulizers and aspirators

Under current law, there are five categories in the DME fee schedule. Aspirators and nebulizers are in a category of items requiring frequent and substantial servicing in order to avoid imminent danger to a beneficiary's health.

The Committee bill includes a provision removing aspirators and nebulizers from the category of items requiring frequent and substantial servicing. The provision specifies that separate payments will continue to be made for disposable supplies used in conjunction with nebulizers and aspirators.

****523*196** Sec. 5034. Certification of suppliers

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There are currently no explicit statutory standards that suppliers of durable medical equipment, prosthetic devices, prosthetics and orthotics, surgical dressings, splints, casts, and other devices for fractures and dislocations, home dialysis supplies, and immunosuppressive drugs must meet in order to qualify for Medicare reimbursement.

The Committee bill requires the Secretary to establish national standards for suppliers of these items and to issue a supplier number to those entities meeting the national standards. No payment for covered items will be made to a supplier without a supplier number after October 1, 1994. A supplier number is not required for items furnished as an incident to a physician's service. The renewal of supplier numbers for current suppliers will be phased-in over a 2-year period.

The Committee bill also includes provisions requiring the Secretary to develop standardized certificate of medical necessity (CMN) forms for use by physicians in documenting medical necessity related to the prescription of covered items. Such forms may not, except in specified cases, by completed by suppliers for submission to physicians on or after October 1, 1994. The Secretary is also required to develop and establish uniform national coverage and utilization review criteria for 200 items of DME, prosthetic devices, prosthetics and orthotics, and surgical dressings.

Sec. 5035. Prohibition against carrier forum shopping

Under the Committee bill, DME suppliers are required to submit claims to the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

Sec. 5036. Restrictions on certain marketing and sales activities

The Committee bill prohibits DME suppliers from making unsolicited telephone contacts with Medicare beneficiaries, unless the beneficiary gives permission, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare is prohibited from paying for an item provided subsequent to a prohibited telephone contact. Beneficiaries are not liable for the cost of items furnished in violation of this requirement, and the supplier must refund any amounts collected on a timely basis or be subject to certain sanctions.

Sec. 5037. Kickback clarification

Current law exempts employees in bona-fide employment relationships from penalties assessed for knowingly and willfully soliciting or receiving remuneration (including kickbacks, bribes, or rebates) or offering or paying remuneration as an incentive for Medicare referrals.

The Committee bill specifies that the exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies does not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

****524*197** Sec. 5038. Beneficiary liability for noncovered services

Under current law, there are no limits on balance billing for medical equipment suppliers, and there are no circumstances specified under which beneficiaries are not liable for charges for items furnished by suppliers on an unassigned basis which are not covered items.

The Committee bill stipulates the circumstances under which Medicare beneficiaries are not financially liable for covered items furnished by a supplier on an assigned or unassigned claim basis. Beneficiaries are not obligated to pay for an item if: (1) the supplier does not have a supplier number or is excluded from Medicare participation; (2) Medicare has denied payment for the item in advance; or (3) the item is determined not to be reasonable and necessary for the beneficiary's condition.

Sec. 5039. Adjustments for inherent reasonableness

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The Committee bill includes a provision to clarify that the authority for adjustments for inherent reasonableness applies to DME fee schedules and that such adjustments are to be based on the prices and costs applicable at the time the item is furnished. The Secretary is also specifically directed to determine whether payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary are inherently reasonable, and to adjust payments for these items if the amounts are not inherently reasonable.

Sec. 5040. Payment for surgical dressings

The Committee bill includes a new provision for determining payments for surgical dressings under Medicare. Under the provision, payments for surgical dressings are made in a lump sum in an amount equal to 80 percent of the lesser of the actual charge for the item or the national payment limit (computed based on local payment amounts using average reasonable charges for the 6-month period ending June 30, 1992, increased by the covered item update for 1993 and 1994.

Sec. 5041. Payment for Tens devices

The Committee bill includes a provision reducing the DME fee schedule amount for transcutaneous electrical nerve stimulation (TENS) devices by an additional 30 percent.

Sec. 5042. Miscellaneous and technical corrections

The Committee bill includes a number of technical corrections to payments for durable medical equipment included in OBRA 1990.

Subchapter D–Part B Premium

Sec. 5051. Part B Premium

The Committee bill provides for an extension of the current law policy for establishing the monthly Part B premium for beneficiaries enrolled in the program. Under this policy the premium is established at a level that will result in aggregate Part B premium ****525*198** payments equal to 25 percent of aggregate estimated Part B expenditures. This policy will continue through calendar year 1997.

Subchapter E–Other Provisions

Sec. 5061. Payments for clinical diagnostic laboratory tests

Under current law, Medicare payments for clinical laboratory services are made on the basis of fee schedules that are in place in payment areas designated by the Secretary. Each fee schedule is limited by a national cap which is currently equal to 88 percent of the median of all the fee schedules established for a particular test. The fee schedules are adjusted annually by the increase or decrease in the CPI–U, except that for fiscal years 1991, 1992, and 1993 the update is limited to 2 percent.

The Committee bill includes two modifications to the payment policy for clinical laboratory services. The national cap on the fee schedules for laboratory services is reduced to 76 percent of the median of all the fee schedules for a particular test, and the 2 percent update policy is extended through fiscal year 1998.

Sec. 5062. Treatment of inpatients and provision of diagnostic and therapeutic X-ray services by rural health clinics and federally qualified health centers

Under current law, Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) services are a covered

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Medicare benefit. RHCs and FQHCs that provide physician and other covered outpatient services to Medicare beneficiaries are paid on the basis of an inclusive rate.

The Committee bill clarifies that RHCs and FQHCs are not limited to providing services solely to outpatients. Physician services provided to Medicare patients of a RHC or GQHC would be covered (and paid for through the all-inclusive rate) when such patients are inpatients in a covered medical facility. In addition, the Committee bill treats diagnostic and therapeutic X-ray services as qualified RHC and FQHC services.

Sec. 5063. Application of mammography certification requirements

In 1992 Congress enacted the Mammography Quality Standards Act which established a certification program for mammography facilities under Section 354 of the Public Health Service Act.

The Committee bill requires any mammography facility providing covered screening or diagnostic mammograms to Medicare beneficiaries to hold a certificate (or provisional certificate) issue in accordance with the provisions of that Act.

Sec. 5064. Extension of Alzheimer's disease demonstration

The Committee bill extends the Medicare Alzheimer's Disease Demonstration for an additional year.

Sec. 5065. Oral cancer drugs

Under current law, Medicare coverage for outpatient prescription drugs (with some exceptions for immunosuppressive drugs and erythropoietin) is limited to drugs which can not be self-administered. Drugs which can be taken orally are not covered.

****526*199** The Committee bill extends Medicare coverage for oral cancer drugs if they are the same chemical entity as anti-cancer drugs covered by Medicare when administered intravenously.

Sec. 5066. Extension of municipal health service demonstration projects

The Committee bill extends the waivers for the four municipal health service demonstration projects through December 31, 1997. The Committee intends that, in conducting the study mandated under OBRA 1989, the Health Car Financing Administration will include consideration of costs to Medicaid and other payers, access to care, outcomes, beneficiary satisfaction, and utilization differences among the different populations being served by the demonstration sites.

Sec. 5067. Treatment of certain Indian health programs and facilities as Federally-qualified health centers

The Committee bill revises the current definition of Federally Qualified Health Centers (FQHCs) to include programs and facilities operated by tribes or tribal organizations under the Indian Self-Determination Act.

Under current law these programs and facilities are included in the definition of FQHCs for purposes of the Medicaid program. This amendment conforms the Medicare definition of FQHC with that included under Title XIX of the Social Security Act.

Sec. 5068. Interest Payments

Current law requires Medicare to pay all "clean" claims within 24 calendar days (or 17 calendar days in the case of clean claims submitted by participating physicians) and to pay interest on such claims for each day beyond the maximum period specified. The Fiscal Year 1993 Appropriations Act for the Departments of Labor, Health and Human Services, and Education and Related Agencies required Medicare claims to be held for 27 days prior to payment.

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The Committee bill revises current law to provide for a maximum of 27 calendar days for the payment of clean claims, and prohibits any interest payment for claims during any period for which no payment may be issued, mailed, or otherwise transmitted.

Sec. 5069. Clarification of coverage of certified nurse-midwife services performed outside the maternity cycle

OBRA 1987 provided for direct reimbursement of certified nurse midwives under both Medicare and Medicaid. The statutory definition of certified nurse midwifery services has been erroneously interpreted under regulations promulgated by the Secretary to limit coverage to services provided within the maternity cycle.

The Committee bill clarifies the statutory definition of nurse midwifery services by deleting any reference to the maternity cycle.

****527*200** Sec. 5069A. Increase in, and study of, annual cap on amount of Medicare payment for outpatient physical therapy and occupational therapy services

Under current law, covered outpatient physical and occupational therapy services provided by independently practicing physical and occupational therapists are limited on an annual basis to $750.

The Committee bill increases the annual limit on these outpatient therapy services to $900, effective for services provided on or after January 1, 1994.

Sec. 5070. Miscellaneous and technical corrections

The Committee bill includes a number of technical corrections to Medicare Part B provisions included in earlier reconciliation acts.

Chapter 2–Provisions Relating to Parts A and B

Sec. 5071. Elimination of add-on for overhead of hospital-based home health agencies

Under current law, the Secretary is required to provide an appropriate adjustment for administrative and general costs of hospital-based home health agencies.

The Committee bill repeals the requirement for the special adjustment for the administrative costs of hospital-based home health agencies effective for cost reporting periods beginning after fiscal year 1993.

Sec. 5072. Study and report on Medicare GME Payments

Current law provides for Medicare payment of the direct costs of hospitals operating graduate medical education programs. Hospitals with such programs are paid on the basis of a per resident amount that is determined on the basis of costs for graduate medical education programs in a base year. These hospital-specific per resident amounts are updated each year for inflation.

The Committee bill directs the Secretary to conduct a study of the methodology used to determine payments to hospitals for the costs of graduate medical education programs, including an analysis of the causes of the variation among such hospital payments. The report, which shall include any recommendations for modifications to current payment policy, is due to Congress one year after the date of enactment of this provision.

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Sec. 5073. Medicare as secondary payer

Under current law, Medicare is the secondary payer of covered benefits in cases where a working aged beneficiary or the spouse of such a beneficiary has private group health insurance coverage. In addition, Medicare is also the secondary payer for specified periods for beneficiaries who are entitled due to disability or as a result of end stage renal disease and who have employment-based group health insurance coverage.

The Committee bill includes a number of changes to the Medicare secondary payer policy. First, the current law provisions extending primary coverage for group health insurance plans in the case of ESRD beneficiaries and disabled beneficiaries to 18 months and 24 months, respectively, are extended. Second, application of ****528*201** the Medicare secondary payer provisions for the working aged, the disabled, and the ESRD beneficiaries is limited to employers with 20 or more employees. Third, certain members of religious orders are exempt from the Medicare secondary payer policy. Finally, the Secretary is directed to distribute a survey to beneficiaries in order to obtain information concerning the existence of employment-based group health insurance. The Secretary is also given enhanced enforcement authority with respect to these provisions.

Sec. 5074. Extension of self-referral ban to additional specified services

Under current law, Medicare does not pay for clinical laboratory services provided under a referral by a physician with an ownership interest in the laboratory.

The Committee bill includes an extension of this policy to cover the following designated health services: (1) physical or occupational therapy services; (2) radiology or other diagnostic services; (3) radiation therapy services; (4) the furnishing of durable medical equipment; (5) the furnishing of parenteral and enteral nutritional nutrients, supplies, and equipment; (6) home health services; and (7) home infusion therapy services. In addition, the bill includes a number of exceptions and conditions related to the application of these limitations on physician ownership and referral arrangements.

Sec. 5075. Education in payment for erythropoietin

Current law provides for Medicare payments related to the administration of erythropoietin (ERO) to end stage renal disease beneficiaries with a specified level of anemia. Payment for the drug is made as an add-on to the composite rate paid to facilities for dialysis treatment. Payments to facilities are made in increments of 1,000 unit doses, rounded to the nearest 100 units, with a maximum payment of $11 per 1,000 units.

The Committee bill reduces Medicare payments for erythropoietin by $1.00 per 1,000 units.

Sec. 5076. Medicare hospital agreements with organ procurement organizations

Current law provides for Medicare payment of organ procurement costs incurred by designated organ procurement organizations (OPOs). OPOs are required to have agreements with hospitals to facilitate the identification of organ donors and to retrieve donated organs. Hospitals are required to notify OPOs of any potential organ donors.

The Committee bill requires hospitals to enter into agreements with the OPO designated by the Secretary for the geographic area in which the hospital is located. The Committee believes this requirement will strengthen organ procurement efforts of OPOs and help to relieve the severe shortage of human organs available for transplantation.

Sec. 5077. Extension of waiver for Watts Health Foundation

The Committee bill extends for two years certain waivers under the Medicare program for the Watts Health Foundation.

****529*202** Sec. 5078. Improved outreach for qualified medicare beneficiaries

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The Committee bill requires the Secretary to establish and implement a method for obtaining information from individuals when they become entitled to benefits under Part A or enroll in Part B that may be used to determine eligibility for benefits under the Qualified Medicare Beneficiary (QMB) program.

Sec. 5079. Social health maintenance organizations

The Committee bill extends the SHMO demonstration projects through calendar year 1997, and authorizes an expansion in the number of individuals who may participate in such a project to not less than 12,000. Finally, the Committee bill permits one of the SHMO demonstration projects to enroll Medicare end stage renal disease (ESRD) beneficiaries.

Sec. 5080. Peer review organizations

The Committee bill repeals the second surgical opinion program, and makes certain technical corrections in the reporting requirements of Peer Review Organizations (PROs) with respect to the State board or boards responsible for licensing or disciplining physicians or other practitioners providing services to Medicare beneficiaries.

Sec. 5081. Hospice information to home health beneficiaries

The Committee bill requires skilled nursing facilities and home health agencies to inform beneficiaries of the hospice benefit under Medicare, if a Medicare participating hospice program is located in the geographic area or it is common practice to refer patients to hospices out of the area. SNFs would be required to provide the information to all beneficiaries at the time of admission as part of the oral and written statement of rights. As a condition of participation in Medicare, home health agencies would be required to provide the information in advance of the patient's coming under care of the agency.

Sec. 5082. Health maintenance organizations

The Committee bill requires the Secretary to revise the payment methodology for HMOs to account for differences in the proportion of beneficiaries in the area for whom Medicare is secondary and the proportion of such beneficiaries nationally, effective for contracts beginning with 1994. The Secretary is also required to further revise the HMO payment methodology taking into account (1) the difference in costs associated with beneficiaries with different health status; (2) the effects of using alternative geographic classifications; and (3) the impact of the Medicare secondary payer policy. The Secretary is directed to submit a proposal to Congress on a revised payment methodology to be applied in years beginning with 1996.

Sec. 5083. Miscellaneous and technical corrections

The Committee bill includes a number of technical corrections to provisions included in earlier budget reconciliation acts.

****530*203** Chapter 3–Provisions Relating to Medicare Supplemental Insurance Policies

Sec. 5091. Standards for Medicare supplemental insurance policies

The Committee bill makes a number of changes to the federal standards respecting the sale and regulation of Medicare supplemental insurance policies.

(a) Preventing duplication.–This provision continues the current law prohibition on the sale of duplicative health insurance policies subject to the following conditions. The provision clarifies that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (1) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare and Medicaid; (2) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; and (3) a health insurance policy, other

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than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties are waived, however, for the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly or on behalf of the individual without regard to other health benefit coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits.

Policies subject to the disclosure requirements include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long-term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication do not alter in any way the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary.

The original intent of the OBRA 1990 provision remains: that of protecting individuals from the sale of uncessary and duplicative insurance. The Committee notes that in addition to the non-duplication provisions of current law, much of the duplicate insurance that might be sold to the elderly is elsewhere banned under current law. Specifically, the simplification provisions of current law require that the only policies that may be sold are the approved standard packages. Therefore, sales in violation of these provisions result in penalties separate from and in addition to those under subsection (d) of current law. The Committee remains deeply concerned about reports it has received that certain sellers of insurance may be trying to sell excessive insurance to the elderly or may be distorting Congressional intent with respect to this provision in order to deny coverage under existing policies, cancel coverage, or ****531*204** avoid paying claims. The Committee will continue its vigilant oversight over this area.

(b) Loss ratios and refund of premiums.–These provisions clarify that the OBRA 1990 loss ration standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies after the effective date.

(c) Pre-existing condition limitations.–This provision clarifies that the pre-existing condition limitations apply to any policy that becomes effective during the 6 month period beginning with the first month that an individual who is 65 years of age or older is first enrolled for benefits under Part B, irrespective of when the policy is issued or whether the application is submitted prior to the beginning of the 6 month period. In the case of individuals enrolled in part B prior to age 65, Medigap insurers are required to offer coverage, regardless of medical history, for a 6 month period when the individual reaches age 65. Insurers are prohibited from discriminating in the price of policies for such an individual, based on the medical or health status of the policyholder.

(d) Other miscellaneous technical corrections.–The bill includes a number of other minor and technical amendments to the OBRA 1990 Medigap provisions.

SUBTITLE B–MEDICAID PROGRAM AND OTHER HEALTH CARE PROVISIONS

Chapter 1–Medicaid Program

Subchapter A–Program Savings Provisions

Part 1–Repeal of mandate

Sec. 5101. Personal care services furnished outside the home as optional benefit

Under current law, States are required, effective October 1, 1994, to cover personal care services under their Medicaid programs for all individuals entitled to nursing facility benefits. As proposed by the Administration, the Committee bill repeals this requirement. The bill allows States, effective October 1, 1994, to cover personal care services furnished in a home or other location.

Part 2–Outpatient prescription drugs

Sec. 5106. Permitting prescription drug formularies under State plans

Under current law, States that elect to cover prescription drugs under their Mediciad programs must cover all the outpatient prescription drugs with respect to which manufacturers have agreed to provide rebates. States are allowed to impose prior authorization controls on covered outpatient drugs (except during the first 6 months after a drug has been approved for marketing), but they are not permitted to establish formularies.

****532*205** The Committee bill allows States, effective October 1, 1993, to establish formularies limiting coverage of prescription drugs under their Medicaid programs, but only if the formularies meet certain requirements. The formulary must be established by a committee consisting of physicians, pharmacists and other individuals appointed by the Governor of the State. A State may use the drug use review board it establishes under current law as its formulary committee.

The formulary committee may exclude a drug from the fromulary with respect to treatment of a specific disease or condition for an identified population only if it finds, based on the drug's labeling (or, in the case of off-label uses, based on information from certain compendia), that the drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other drugs included in the formulary (hereinafter "significant therapeutic advantage"). A decision of the formulary committee to exclude a drug from a formulary would have to be explained in writing unless the declsion was made at a public meeting. Drugs excluded from the formulary would nonetheless be covered under the State's Medicaid program on a case-case basis at the request of a patient's physician if the State has given prior authorization for payment. Manufacturers could obtain judicial review of a decision to exclude a drug from a formulary.

The purpose of this provision is to permit the States to reduce Medicaid spending on prescription drugs while not diminishing the medical care of Medicaid patients. Thus, the formulary committee might exclude a more expensive brand name product, while leaving the generic version of the same chemical entity on the formulary. Alternatively, the committee might exclude one or more different chemical entities that are approved for the same disease or condition so long as it found that the excluded drugs do not have a significant therapeutic advantage over the drugs remaining on the formulary.

A drug might be excluded from the formulary because it has no significant therapeutic advantage over less expensive drugs remaining on the formulary. The manufacturer of a drug that the committee has legitimately excluded from the formulary may choose to reduce its price so that its cost is not greater than the cost of a therapeutically similar drug listed on the formulary for the same disease or condition.

Under the Committee bill, the formulary committee may not exclude a drug from the formulary if the drug's labeling (or in the case of unapproved uses if information in one of three listed compendia) demonstrates that the drug has a significant, clinically meaningful therapeutic advantage over drugs remaining on the formulary. This provision does not require exclusion of any drug even if it has no significant therapeutic advantage. Instead, it simply prohibits exclusion of any drug with a significant therapeutic advantage. Thus, the formulary committee could, for any reason, including expressions of community preference or information in scientific literature, leave a drug on the formulary even if it did not have such an advantage. An example of where the formulary committee might take such information into account is in considering possible synergistic effects of drugs for AIDS or chemotherapy.

****533*206** Under Food and Drug Administration procedures, manufacturers may obtain changes in a drug's labeling after the drug is approved. These changes may include information about new uses of the drug or advantages that the drug has over

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other therapies. For this reason, the Committee expects that the formulary committee will periodically review its decisions to exclude drugs from its formulary to determine whether those drugs continue to have no significant therapeutic advantage over drugs listed on the formulary.

Sec. 5107. Elimination of the special exemption from prior authorization for new drugs

Under current law, States are prohibited from subjecting a covered outpatient drug to prior authorization during the first six months after a drug is approved by the Food and Drug Administration. The Committee bill eliminates this prohibition so that a State will be able to impose the prior authorization requirement at any time after a drug is approved.

Sec. 5108. Technical corrections relating to section 4401 of OBRA–1990

The Committee bill makes technical corrections to section 4401 of the Omnibus Budget Reconciliation Act of 1990, P.L. 101–508, relating to reimbursement for prescribed drugs.

Part 3–Restrictions on divestiture of assets and estate recovery

Sec. 5111. Transfer of assets

Under current law, individuals residing in nursing facilities who dispose (or whose spouses dispose) of resources for less than fair market value during the 30-month period prior to application for Medicaid are subject to a delay in eligibility for nursing facility care (and home and community based services). If the individual is eligible for Medicaid at the time of institutionalization, the 30-month "look-back" period runs from the date of institutionalization. The period of ineligibility begins with the month in which the resources are transferred and lasts for the number of months equal to the lesser of (1) 30 or (2) the total uncompensated value of the resources transferred divided by the average cost to a private patient of nursing facility services in the State. This penalty does not apply in certain circumstances, including transfers to or from a spouse, to a disabled child, or to the extent that the State determines that denial of eligibility would work an undue hardship.

Under the Committee bill, individuals who, during the period 36 months prior to the first day of application for Medicaid benefits as an institutionalized individual, have transferred assets for less than fair market value will be subject to a denial of eligibility for Medicaid coverage for nursing facility (and home and community-based waiver services). The period during which benefits are denied will begin with the date on which the prohibited transfer occurred and will run for the number of months determined by dividing the total uncompensated value of the resources transferred by the average monthly cost, to a private patient, of nursing facility services in the State. The penalties for different transfers occurring within ****534*207** the 36-month "look-back" period will run consecutively, not concurrently.

The Committee bill requires that individuals will not be ineligible for Medicaid coverage to the extent that the State agency determines, under procedures established by the State (in accordance with standards specified by the Secretary) that the denial of eligibility would work an undue hardship (in accordance with criteria established by the Secretary). Under the current law "undue hardship" provision, there is no Federal guidance on either the procedures a State should follow in making such determinations or the types of circumstances that should be regarded as working a hardship. States are simply required to include a definition of "undue hardship" in their State Medicaid plans. The Committee is concerned that some States may not be extending to all individuals facing hardship the protections of existing law. The Committee bill therefore amends current law to require the Secretary (1) to specify standards that State hardship determination procedures must meet, and (2) to establish criteria States must apply in determining whether a hardship exists.

The Committee expects the Secretary, in developing standards for the determination process, to address at least the following issues: notice to the institutionalized individuals that a hardship exception exists; adequate representation of the interests of such individuals; the timeliness of the determination process; protections for institutionalized individuals from transfer by a nursing facility while a determination is pending; and the ability to appeal an adverse determination.

The Committee expects the Secretary, in developing criteria for use by States in determining whether an "undue hardship"

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exists, will provide for special consideration of at least the following: cases in which the individual has no way to pay for the necessary care; cases in which the transfer was not knowingly authorized by the individual; and cases in which the individual assigns rights of recovery she or he may have in a cause of action against the transferee to the State or where the State has such rights pursuant to State law. In order to ensure that the standards and criteria are based on as much information as possible, the Committee expects the Secretary to develop them through a process that provides for notice and a period for public comment.

Under the Committee bill, an asset held by an individual in common with another person or persons in a joint tenancy or similar arrangement is considered to be transferred when any action is taken, by the individual or by any other person, that eliminates or reduces the individual's ownership or control of the asset.

Under the Committee bill, the following rules apply to assets placed in trust, without regard to the purposes of the trust, whether the trustees have (or exercise) any discretion, or any restrictions on distributions from the trust. With respect to revocable trusts, the corpus is considered a resource available to the individual; payments from the trust to or for the benefit of the individual are considered income to the individual; and any other payments from the trust are considered a transfer of assets by the individual.

With respect to irrevocable trusts which may benefit the grantor, the corpus of the trust is considered a resource available to the individual; ****535*208** payments from the trust to or for the benefit of the individual are considered income to the individual; and any other payments from the trust are considered a transfer of assets by the individual. Any portion of such an irrevocable trust from which no payment can under any circumstances be made to the individual shall be considered a transfer of assets by the individual as of the date of establishment of the trust.

With respect to irrevocable trusts which cannot benefit the grantor, the corpus shall be considered a transfer of assets by the individual as of the date of the establishment of the trust and payments from the trust after this date shall be disregarded.

Under the Committee bill, these rules do not apply to the following types of trusts: (1) trusts established for the benefit of a disabled individual by a parent, grandparent, or other representative payee (including a court or administrative body) of the individual; and (2) trusts composed only of pension, Social Security, and other income to the individual (plus accumulated income) under which the State receives any amounts remaining upon the death of the individual and which are established in States that limit nursing home eligibility to individuals with incomes below an amount set by the State no higher than 300 percent of the benefit rate under the Supplemental Security Income (SSI) program.

The Committee bill requires State Medicaid agencies to establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of these rules relating to "Medicaid qualifying trusts" with respect to an individual if the individual establishes (under criteria established by the Secretary) that the application of these rules would work an undue hardship on the individual.

Sec. 5112. Medicaid estate recoveries

Under current law, a State has the option of seeking recovery of amounts correctly paid on behalf of an individual under its Medicaid program from the individual's estate if the individual was 65 years or older at the time he or she received Medicaid benefits. The State may not seek recovery from the beneficiary's estate until the death of the surviving spouse, if any, and only if the individual has no surviving minor or disabled child.

Under the Committee bill, States are required to establish an estate recovery program that meets certain requirements. The program must identify and track resources (whether or not excluded for eligibility purposes) of individuals who receive nursing facility, home and community-based services, and other specified long-term care services. The program must promptly ascertain when the individual and the surviving spouse, if any, dies, and must provide for the collection of the amounts correctly paid by Medicaid on behalf of the individual for long-term care services from the estate of the individual or the surviving spouse. The term "estate" is defined as all real and personal property of a deceased individual and all other assets in which the individual had any legally cognizable title or interest at the time of his death, including assets conveyed to a survivor, heir, or assign through joint tenancy, survivorship, life estate, living trust, or other arrangement.

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****536*209** The Committee bill requires the State agency to establish procedures (in accordance with standards specified by the Secretary) under which the agency waives recovery if it would work an undue hardship (in accordance with criteria established by the Secretary). The Committee expects that, in developing standards for State recovery procedures, the Secretary will address adequacy of notice to, and representation of, affected parties; the timeliness of the process; and the availability of appeals and other issues. With respect to the establishment of criteria for use by States in determining whether to waive recovery, the Secretary should provide for special consideration of cases in which the estate subject to recovery is (1) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business, or (2) a homestead of modest value or (3) other compelling circumstances. The Committee also expects the Secretary to provide guidance to States on how to address situations where recovery is not waived and beneficiaries of the estate from which recovery is sought wish to satisfy the State's recovery claim without selling a non-liquid asset subject to recovery.

Sec. 5113. Closing loophole permitting wealthy individuals to qualify for Medicaid

Under the Committee bill, Section 1902(r)(2) of the Social Security Act is amended to prohibit State plans from disregarding assets in cases where an individual has received or is eligible to receive payments under a long-term care policy. The provision does not apply to State plan provisions that are approved by the Secretary as of May 14, 1993. This provision prevents States from disregarding assets of individuals seeking Medicaid eligibility on the basis that individuals have purchased long-term care insurance policies. Certain states and the Secretary have interpreted section 1902(r)(2) as permitting such disregards.

Part 4–Improvement in identification and collection of third party payments

Sec. 5116. Liability of third parties to pay for care and services

Under current law, State Medicaid agencies are required to take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for covered services provided to Medicaid beneficiaries.

(a) Liability of ERISA plans.–The Committee bill includes group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, service benefit plans, and health maintenance organizations among the third parties the legal liability of which States are required to ascertain with respect to services provided to Medicaid eligibles.

(b) Requiring States to prohibit insurers from taking Medicaid status into account.–The committee bill requires States to prohibit any health insurer, group health plan under ERISA, service benefit plan, or HMO from taking into account an individual's eligibility for Medicaid in enrolling the individual for coverage or making any payments for benefits to (or on behalf of) the individual.

****537*210** (c) State right to subrogation.–The Committee bill provides that, in any case where a third party has a legal liability to make payment for services provided to a Medicaid beneficiary, a State is subrogated to the right of any other party to payment for such services to the extent that payment has been made by the Medicaid program.

Section 5117. Health coverage clearinghouse

The Committee bill directs the Secretary of Health and Human Services to establish and operate a Health Coverage Clearinghouse for the purpose of identifying indemnity insurers, service benefit plans, group health plans under ERISA, health maintenance organizations, and other third parties which may be liable for payment for services provided to Medicaid, Medicare, or Indian Health Service beneficiaries (or individuals receiving services funded under the Maternal and Child Health Block Grant). The bill directs State Medicaid agencies to request information from the Clearinghouse concerning the employment and group health coverage of a Medicaid beneficiary, the beneficiary's spouse, or, if the beneficiary is a dependent child, the beneficiary's parents. The bill sets forth procedures under which State Medicaid programs may obtain this information from the Clearinghouse as well as procedures for the maintenance of a data bank by the Clearinghouse. The bill also directs employers to provide information relating to coverage of individuals (and spouse and dependent children)

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under the employer's group health plan to the Clearinghouse and provides a civil monetary penalty for willful and repeated failure to comply.

Sec. 5118. Medical child support

Under current law, State Medicaid agencies must enter into cooperative arrangements with the State's Child Support Enforcement agency under Title IV–D of the Social Security Act with respect to the enforcement and collection of rights of payment for medical care by or through a parent. States must also require individuals, as a condition of Medicaid eligibility, to assign to the State any rights to support for the purpose of medical care by a court or administrative order.

The Committee bill requires States to have in effect the following laws relating to medical child support: (1) a law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that the child was born out of wedlock, cannot be claimed as a dependent on the parent's Federal income tax return, or does not reside with the parent or in the insurer's service area; (2) a law that requires an insurer, in any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family coverage through the insurer, to permit the parent and/or child to enroll regardless of enrollment season restrictions; (3) a law that requires any employer doing business in the State that provides health coverage to a child pursuant to court or administrative order to withhold the employee's share of the premium (up to the maximum permitted by the Consumer Credit Protection Act); (4) a law that prohibits an insurer from imposing special requirements on a State agency acting as a subrogee or agent of a ****538*211** Medicaid beneficiary; (5) a law that requires an insurer to facilitate payment for services to a child in cases where the child has health coverage through the noncustodial parent; and (6) a law that requires the State Medicaid agency to garnish wages, or withhold amounts from State tax refunds, to individuals who are subject to a medical child support order, have received payment from a third party of the costs of services to the child, and have not reimbursed the provider or the other parent or guardian.

For purposes of these laws, the term "insurer" includes an entity offering a service benefit plan, a health maintenance organization, and a group health plan under ERISA.

Part 5–Assuring proper payments to disproportionate share hospitals

Sec. 5121. Assuring proper payments to disproportionate share hospitals

Under current law, States are required to make adjustments to payments for inpatient services provided to Medicaid patients at hospitals serving disproportionate numbers of Medicaid and other low-income patients with special needs. States have broad authority to designate "disproportionate share" (DSH) hospitals. However, a hospital is deemed to be a DSH hospital, and is entitled to receive payment adjustments, if (1) its Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the State, or (2) the hospital's low-income utilization rate exceeds 25 percent. There is no restriction on the amount of DSH payment adjustments any DSH facility can receive; however, the total amount of DSH payment adjustments in any State may not exceed the higher of (1) 12 percent of the total Medicaid expenditures in the State during the fiscal year or (2) the total amount of DSH payment adjustments made by the State during FY 1992.

The Committee is concerned by reports that some States are making DSH payment adjustments to hospitals that do not provide inpatient services to Medicaid beneficiaries. The purpose of the Medicaid DSH payment adjustment is to assist those facilities with high volumes of Medicaid patients in meeting the costs of providing care to the uninsured patients that they serve, since these facilities are unlikely to have large numbers of privately insured patients through which to offset their operating losses on the uninsured. It is difficult for the Committee to understand how the payment of a Medicaid DSH payment adjustment to a facility that has no Medicaid inpatients can be justified on statutory or policy grounds. The Committee bill therefore prohibits States from designating a hospital as a Medicaid disproportionate share hospital unless at least 1 percent of the facility's inpatient days are attributable to Medicaid patients.

The Committee is also concerned by reports that some States have made DSH payment adjustments to State psychiatric or

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university hospitals in amounts that exceed the net costs, and in some instances the total costs, of operating the facilities. According to such reports, once received by the State hospital, these excess Medicaid DSH payments are transferred to the State general fund, ****539*212** where they may be used to fund public health or mental health services, to draw down more Federal Medicaid matching funds, or to finance other functions of State government, such as road construction and maintenance. A parallel transaction can occur at the local level. The Medicaid program is intended to assist States in paying for covered acute and long-term care services for the poor. In the view of the Committee, use of Federal Medicaid funds for unrelated purposes, such as building roads, operating correctional facilities, balancing State budgets, is a clear abuse of the program.

The Committee bill limits the amount of payment adjustments to State or locally-owned or operated DSH hospitals to the costs (as determine by the Secretary) these facilities incur in furnishing inpatient or outpatient services to Medicaid-eligible patients and uninsured patients, net of any payments received by the facility under Medicaid (other than the DHS payment adjustment) and any out-of-pocket payments received from uninsured individuals. For this purpose, payments made by a State or locality to a hospital for services provided to indigent patients are not treated as a source of third party payment.

The Committee recognizes that this limitation, while long overdue, could lead to dislocations in some States if implemented immediately. The Committee bill is therefore effective at the end of the State fiscal year that ends during 1994 or, in the case of a State with a legislature that is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995.

Subchapter B–Miscellaneous provisions

Part 1–Anti-fraud and abuse provisions

Sec. 5131. Application of Medicare rules limiting certain physician referrals

Under current law, physicians with certain ownership and/or compensation arrangements with clinical laboratories are prohibited from referring Medicare patients to these clinical laboratories. Section 5074 of the Committee bill extends these self-referral prohibitions to other designated health services. The Committee bill applies these Medicare rules to Medicaid.

Sec. 5132. Intermediate sanctions for kickback violations

(a) Penalty for kickbacks.–Under current law, the Federal Government is authorized to sanction violations of the Medicare/Medicaid anti-kickback statute, section 1128B(b) of the Social Security act, through criminal prosecution or exclusion from participation in Medicare, Medicaid, and the Maternal and Child Health Block Grant. Both of these legal remedies are extremely serious for the health care provider or practitioner involved. In order to foster continued enforcement of the kickback statute while ensuring that appropriate sanctions are imposed, the Committee bill establishes an intermediate remedy. The Committee bill amends the existing civil monetary penalty authority (section 1128A of the Social Security Act) to authorize an alternative administrative remedy for redressing kickbacks in appropriate cases. Consistent with the "patient ****540*213** dumping" civil monetary penalty authority (section 1867 of the Social Security Act), the Secretary would be authorized to impose a penalty of up to $50,000 per violation. Also, the Secretary would be authorized to impose an assessment, in lieu of damages, of up to twice the amount of illegal remuneration, irrespective of whether a portion was for legitimate items or services. This new civil monetary penalty authority could be used in cases initiated by the Secretary after the date of enactment, regardless of whether the illegal remuneration was offered, paid, solicited, or received prior to or after the date of enactment. The Committee observes that this provision merely establishes an alternate intermediate remedy to redress practices that are illegal under current law; it does not establish a new category of conduct deemed to be illegal or impermissible.

Authoriziation to act.–Under current law, the Secretary is permitted to initiate a civil money penalty proceeding only upon authorization of the Attorney General. This entails obtaining specific declinations to prosecute a case from both criminal and civil prosecutors. The Committee is concerned that this declination process has delayed the timely imposition of civil monetary penalties by the Secretary.

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The Committee bill authorizes the Secretary to initiate a civil monetary penalty action one year after a case is presented to the Department of Justice for consideration for either criminal or civil prosecution. Should the Department of Justice initiate an action in a U.S. district court within the one year after the case has been presented to it, the Committee bill provides that the Secretary will defer to that action pending judicial resolution. If, at the end of the one year period, the Department of Justice has not initiated an action but indicates a desire to do so at some future time, the Secretary would have the option either to defer a civil monetary penalty action pending the disposition of the future criminal or civil action, or to initiate an action to impose civil monetary penalties. The purpose of the Committee bill is to facilitate the timely and effective prosecution of Medicare and Medicaid fraud and abuse cases by the Federal Government.

Sec. 5133. Requiring maintenance of effort for State Medicaid fraud control units

Under the Committee bill, a state is required to maintain its annual expenditures for Medicaid Fraud Control units at an amount not less than the amount expended for such a unit in the state fiscal year ending in 1992. Under the bill, this amount is adjusted annually to reflect the percentage increase in total expenditures under the state plan over this base year.

Part 2–Managed care provisions

Sec. 5135. Medicaid managed care anti-fraud provisions

The Committee bill contains a number of provisions intended to assure the integrity of the process of contracting with Medicaid managed care plans; to protect Federal Medicaid dollars from diversion to other purposes and from absorption by financially unstable ****541*214** organizations; and to protect Medicaid beneficiaries from marketing fraud and profiteering.

(a) Prohibiting affiliations with individuals debarred by Federal agencies.–The Committee bill prohibits entities contracting with the Medicaid program on a risk basis from having as a director, officer, partner, or person with a 5 percent or greater ownership interest, any person (including an organization) debarred or suspended by the Federal Government, pursuant to the Federal acquisition regulation, from government contracting or subcontracting, or any affiliate (within the meaning of the Federal Acquisition Regulation) of such a person. The Committee bill also prohibits entities contracting with the Medicaid program on a risk basis from having an employment, consulting, or other agreement with such a person for the provision of goods and services that are significant and material to the organization's obligations under its Medicaid risk contract with the State.

(b) Requirement for State conflict-of-interest safeguards in Medicaid risk contracting.–The Committee bill requires States, effective July 1, 1994, to certify to the Secretary that they have in effect conflict-of-interest safeguards with respect to officers and employees that contract on a risk basis with organizations under the Medicaid program that are at least as effective as the conflict of interest safeguards, under section 27 of the Office of Federal Procurement Policy Act, that apply to Federal procurement officials with comparable responsibilities with respect to contracts of similar scope.

(c) Requiring disclosure of financial information.–The Committee bill requires entities contracting with the State on a risk basis to report to the State such financial information as the Secretary or the State may require to demonstrate a fiscally sound operation. The bill also requires these entities to make available to their enrollees (and enrollee representatives), upon reasonable request, (1) the financial information reported to the State regarding the fiscal soundness of its operation, including the fiscal soundness of its parent and guaranteeing organization, if any; (2) the information required to be disclosed under sections 1124 (relating to ownership and control) and 1126 (relating to the conviction or exclusion of owners or managing employees) of the Social Security Act; and (3) a description of transactions between the entity and a party in interest specified in section 1318(a)(3) of the Public Health Service Act.

(d) Prohibiting marketing fraud.–The Committee bill directs the Secretary to prescribe procedures and conditions applicable to all Medicaid risk contractors (as she has done in with respect to Medicare risk contractors) to ensure that, before an individual is enrolled with the entity, the individual is provided accurate and sufficient information to make an informed decision whether or not to enroll.

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(e) Requiring adequate equity for-profit entities.–The Committee bill requires that for-profit entities contracting with the State on a risk basis maintain an average ratio of equity capital to Medicaid capitation payments under the contract of not less than a minimum ratio specified by the Secretary. The Committee bill applies the same requirement with respect to related for-profit entities that ****542*215** subcontract with non-profit entities that contract with the State on a risk basis.

(f) Requiring adequate provision against risk of insolvency.–The Committee bill requires that HMO's contracting with State Medicaid programs make adequate provision against the risk of insolvency which meets such standards as the Secretary shall prescribe. The Committee expects that these standards will protect Medicaid beneficiaries and Federal Medicaid dollars to the same extent that current Medicare solvency standards protect Medicare beneficiaries and Federal Medicare funds.

(g) Requiring report on net earnings and additional benefits.–The Committee bill requires that entities contracting with States on a risk basis under Medicaid submit a report to the State and to the Secretary not later than 12 months after the close of a contract year containing (1) a financial statement of the entity's net earnings under the contract during the contract year which has been audited using auditing standards established by the Secretary in consultation with the States, and (2) a description of any benefits (other than those required under the contract with the State) provided to the Medicaid-eligible enrollees during the contract year. This reporting requirement would be effective for contract years (under both existing and new contracts) beginning on or after October 1, 1993. In establishing auditing standards, the Secretary may accept financial statements prepared in a manner consistent with generally accepted accounting principles, if the use of those principles will achieve the purpose of protecting the financial integrity of the Medicaid program.

The Committee recognizes that, in the case of plans with substantial revenue sources other than the Medicaid program, it may be difficult to disaggregate the costs attributable to their performance under the Medicaid contract from the costs attributable to their contracts with other payors. In these circumstances, the Committee expects that the Secretary will develop auditing standards that will provide a fair estimation or apportionment of the costs attributable to the Medicaid contract. One approach the Secretary may choose to consider is the use of rules similar to the Adjusted Community Rate (ACR) provisions in the Medicare risk contracting program. Under this approach, the plan would calculate its ACR, based on the items and services furnished to Medicaid beneficiaries, adjusted for intensity and use of services by those beneficiaries. Using this proxy for costs attributable to the Medicaid contract, the plan would then compare its revenues under the contract to its costs to calculate net earnings under the contract for purposes of this reporting requirement. In the case of HMOs that charge one rate, prospectively determined and publicly reviewed or approved by the State in which they operate, for all non-Medicare members for the same basic benefits, the Secretary may choose to request the HMO'S prospective net-earnings rate.

(h) Report on net earnings of contractors.–Under current law, Medicare risk contractors are required to apply the difference between their average per capita payments under Medicare and their adjusted community rate to the provision of additional benefits to their Medicare enrollees. There is no comparable requirement under Medicaid, and no limit on the amount an entity may earn ****543*216** under a Medicaid risk contract. The Committee bill directs the Secretary to report to the Congress, within 6 months after enactment, on the earnings of entities with Medicaid risk contracts, and to include in this report recommendations on options for requiring these entities to dedicate a portion of their earnings to the provision of additional benefits to Medicaid-eligible individuals enrolled with the entity. The Committee expects that, in preparing this report, the Secretary will rely on information from a representative sample of managed care plans, including both for-profit and not-for-profit contractors, as well as plans located in different regions of the country.

Sec. 5136. Clarification of treatment of HMO enrollees in computing the Medicaid inpatient utilization rate in qualifying hospitals as disproportionate share hospitals

Under current law, States are required, in reimbursing for inpatient services delivered to Medicaid beneficiaries, to make payment adjustments to hospitals serving disproportionate numbers of low-income patients with special needs. One test of whether a facility is a disproportionate share hospital is its Medicaid inpatient utilization rate–i.e., the number of inpatient days attributable to Medicaid patients in a period over the total number of inpatient days over that period. The Committee bill clarifies that, in determining a hospital's Medicaid inpatient utilization rate for purposes of qualifying as a disproportionate share hospital or determining the amount or level of payment adjustments to be made to the facility, Medicaid-eligible individuals who are enrolled in health maintenance organizations or other entities contracting with the State on a risk basis are to be counted as Medicaid patients.

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Sec. 5137. Extension of period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton area health plan

Under the current law, States may contract on a risk basis with health maintenance organizations and other entities to provide covered services to Medicaid beneficiaries, but only if at least 25 percent of the individuals enrolled on a prepaid basis in the contracting HMO or entity are not covered under Medicare or Medicaid. The Secretary is currently directed to waive this enrollment mix requirement with respect to the Health Plan Network, an unincorporated association affiliated with the Dayton Area Health Plan, Inc., through January 31, 1994. The Committee bill extends this waiver through December 31, 1995.

Sec. 5138. Extension of Medicaid waiver for Tennessee primary care network

Under current law, States may contract on a risk basis with health maintenance organizations and other entities to provide covered services to Medicaid beneficiaries, but only if at least 25 percent of the individuals enrolled on a prepaid basis in the contracting HMO or entity are not covered under Medicare or Medicaid. The Secretary is currently directed to waive this enrollment mix requirement with respect to the Tennessee Primary Care Network ****544*217** through January 31, 1994. The Committee bill extends this waiver period through December 31, 1995.

Sec. 5139. Waiver of application of Medicaid enrollment mix requirement to District of Columbia Chartered Health Plan, Inc

Under current law, States may contract on a risk basis with health maintenance organizations and other entities to provide covered services to Medicaid beneficiaries, but only if at least 25 percent of the individuals enrolled on a prepaid basis in the contracting HMO or entity are not covered under Medicare or Medicaid. The Committee bill directs the Secretary to waive the application of this enrollment mix requirement with respect to District of Columbia Chartered Health Plan, for the period beginning on October 1, 1992, and ending on December 31, 1995, but only if the Secretary determines that the Health Plan is making continuous efforts and progress toward achieving compliance with the requirement. The Committee bill does not authorize the Secretary to waive this enrollment mix requirement during the period October 1, 1991, through September 30, 1992.

Sec. 5140. Extension of Minnesota prepaid Medicaid demonstration project

Under current law, the Secretary is required to extend waivers of Medicaid law under section 1115 of the Social Security Act for the Minnesota Prepaid Demonstration Project through June 30, 1996. The Committee bill extends this requirement through June 30, 1998. The Committee bill also authorizes the State to impose a premium on Medicaid-eligible individuals, whether or not they are enrolled in the Prepaid Medicaid Demonstration Project. The amount of the premium may not exceed 10 percent of the amount by which the individual's family income (less expenses for the care of a dependent child) exceeds 110 percent of Federal poverty level applicable to a family of the size involved.

Part 3–Emergency services to undocumented aliens

Sec. 5141. Increases in Federal financial participation for emergency medical services provided to undocumented aliens (Sec. 5141)

Under current law, States are required to pay for care and services received by an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law and who is otherwise eligible for Medicaid under the State's plan, if the care and services are necessary for the treatment of an emergency medical condition. Federal matching payments to the States for these emergency services are made at each State's regular matching rate. The Committee bill raises, with respect to eligible States, the Federal Medicaid matching rate to 100 percent for the expenditures for these services, up to a specified allotment. Eligible States are those for which the allotment under section 204 of the

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Immigration Reform and Control Act of 1986 (the State Legalization Impact Assistance Grant (SLIAG) program) is at least 1 percent of the total allotments for all States during fiscal year 1993. The total amount available under the Committee bill is ****545*218** $300 million in FY 1994; each eligible State' allotment would be the same percentage the State receives under the SLIAG program in FY 1993. The Committee bill is effective only during FY 1994.

Sec. 5142. Limiting Federal Medicaid matching payment to bona fide emergency services for undocumented aliens

Under current law, States are required to pay for care and services received by an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law and who is otherwise eligible for Medicaid under the State's plan, if the care and services are necessary for the treatment of an emergency medical condition. The Committee bill clarifies that this requirement does not apply, and never has applied, to services related to an organ transplant procedure. The bill prohibits the Secretary from disallowing expenditures made for care and services related to an organ transplant furnished before the date of enactment.

Part 4–Miscellaneous provisions

Sec. 5144. Increase in limit on Federal Medicaid matching payments to Puerto Rico and other territories

Under current law, Federal Medicaid matching payments to Puerto Rico are limited to $79 million; Virgin Islands, $2.6 million; Guam, $2.5 million; the Northern Mariana Islands, $750,000; and American Samoa, $1.45 million. Effective for FY 1994, the Committee bill raises the payment ceiling for Puerto Rico to $104 million; for Virgin Islands, to $3.425 million; for Guam, to $3.29 million; for Northern Mariana Islands, to $990,000; and for American Samoa, to $1.91 million. For FY 1995 and subsequent years, the Committee bill increases each of these ceilings by the percentage increase in the medical care component of the consumer price index for all urban consumers.

Sec. 5145. Criteria for making determinations of denial of Federal Medicaid matching payments to States

Under current law, States may obtain a reconsideration of a decision by the Secretary to disallow Federal Medicaid matching payments before the Departmental Appeals Board. Under the Committee bill, if the Board upholds the basis for the disallowance, the Board shall determine whether the amount of the disallowance should be reduced. In making this determination, the Board shall take into account (to the extent the State makes a showing) factors including (1) the nature of the basis of the disallowance, (2) whether the amount of the disallowance is proportionate to the error or deficiency on which the disallowance is based, (3) whether the basis of the disallowance constitutes noncompliance that prevented or materially affected the provision of appropriate services of eligible individuals, and (4) whether Federal guidance with respect to the action that is the basis for the proposed disallowance was insufficient and the State made good faith efforts to conform its action to the intent of the applicable Federal statute or regulation. The Committee bill also provides that no disallowance shall be taken or ****546*219** upheld if the action of the State on which the disallowance would be based is consistent with its approved State plan.

Sec. 5146. Renewal of unfunded demonstration project for pregnant women and children

The Committee bill extends the period of authorization for certain projects for pregnant women and children first enacted in OBRA 89 from three to five years and changes the authorization from $10,000,000 in each of fiscal years 1990, 1991 and 1992 to a total of $30,000,000, for the period of the demonstration. The provision clarifies that the Secretary is now limited only by the five year boundary on the funding of such projects and that the total amount available for such projects is $30,000,000 irrespective of the amount or year in which the first federal expenditure was made. The reporting date is changed to one year after the termination of the projects. The provision is effective as if included in the enactment of OBRA 89.

Sec. 5147. Optional Medicaid coverage of TB-related services for certain TB-infected individuals

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Under current law, infection with TB alone is not a basis for eligibility for Medicaid. The Committee bill establishes an option for States to make certain TB-infected individuals eligible for limited TB-related services and to receive Federal matching payments under Medicaid at the State's regular matching rate.

Eligibility is limited to individuals who have tested positively for TB infection and whose income and resources do not exceed the State's maximum amounts for disabled persons under the State Medicaid plan. Services are limited to physician services, clinic services, lab and X-ray services, case management services, services to encourage completion of prescribed drugs (including directly observed therapy services), and prescription drugs. Inpatient services are not covered, whether for acute care hospitalization or for long-term care.

The incidence of TB in the U.S. has ceased to decline and has, indeed, increased significantly over the past decade. Compounding this problem is the increase of drug-resistant TB, complicating treatment and increasing costs. This epidemic is especially grave among people without private health insurance and poses severe problems for institutions that serve such people. As was noted in a recent report on the epidemic in New York City, "TB zeroes in on those populations whom we are already struggling–not always successfully–to serve, spreading most quickly among those afflicted by poverty, homelessness, or HIV/AIDS. Not incidentally, TB puts an enormous strain on hospitals and health care providers in New York City, who are themselves struggling to survive in an era of growing demands and limited resources."[1]

Because of current categorical restrictions on eligibility for Medicaid, many persons with TB are currently unable to qualify for benefits. Since many untreated persons with TB are infectious, if such limitations on eligibility postpone or interfere with treatment, there may be consequences not just for the individual but for society ****547*220** and public health. The Committee has adopted this measure in order to provide treatment for poor Americans infected with TB, to aid in the control of the current epidemic of tuberculosis, and to assist hospitals and providers throughout the U.S. that are called upon to respond.

The Committee has included in this provision coverage of the basic elements of outpatient treatment for persons who have tested positively to be infected with TB. Among those services are services to observe directly the intake of prescribed drugs (commonly referred to as directly observed therapy, or DOT). The Committee also has provided for reimbursement for other services (other than room and board) designed to ensure completion of regimens of prescribed drugs by outpatients. The Committee has made this provision in an effort to improve the rates of patients who complete prescribed drug treatment and to decrease the rate at which drug-resistant strains of TB develop. While DOT is increasingly recommended routinely for all patients[2] other innovative methods of encouraging patients to complete prescribed drugs have been suggested and should be investigated.

Sec. 5148. Application of mammography certification requirements under the Medicaid program

Under current law, States may, at their option, cover mammography services under their Medicaid programs. The Committee bill requires that any mammography paid for under Medicaid be conducted by a facility that has a certificate (or provisional certificate) issued by the Secretary of Health and Human Services under the Mammography Quality Standards Act of 1992, authored by this Committee (found at section 354 of the Public Health Service Act). Section 5063 of the Committee bill makes a parallel change with respect to Medicare.

Sec. 5149. Removal of sunset on extension of eligibility for working families

Under current law, States are required to continue Medicaid coverage for families who lose eligibility for cash assistance under the Aid to Families with Dependent Children (AFDC) program because they work (or increase their hours of work) for as long as the families continue to report earnings, but no longer than 12 months. This transitional coverage requirement expires on September 30, 1998. The Committee bill repeals this sunset provision.

Sec. 5150. Extension of moratorium on treatment of certain facilities as institutions for mental diseases

The Committee bill extends until December 31, 1995 a moratorium on the effectiveness of a Secretarial determination that the Kent Community Hospital Complex or Saginaw Community Hospital is an Institution for Mental Diseases.

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****548*221** Sec. 5150A. Treatment of certain clinics as federally-qualified health centers

Under current law. States are required to cover services provided by Federally-qualified health centers and to reimburse centers 100 percent of the costs they incur in providing services. Effective July 1, 1993, the Committee bill treats entities that were comprehensive Federally funded health centers under the Medicare program as of January 1, 1990, as Federally-qualified health centers for purposes of Medicaid.

Sec. 5150B. Nursing home reform

(a) Suspension of decertification of nurse aide training and competency evaluation programs based on extended surveys.–Under current law, a nurse aide training and competency evaluation program (or a nurse aide competency evaluation program) may not be offered by or in a nursing facility which, within the previous two years, has been subject to an extended (or partial extended) survey to determine a facility's compliance with the requirements of the 1987 nursing home law ("OBRA 87"). The Committee bill clarifies that a facility-based nurse aide training and/or competency evaluation program may be offered through a nursing facility if the extended (or partial extended) survey conducted on such facility shows that the facility is in compliance with the applicable requirements of OBRA 87.

(b) Requirements for consultants conducting reviews of use of drugs.–Under current law, an independent, external consultant is required to review (on an annual basis) the appropriateness of the written drug plan of each nursing facility resident receiving psychopharmacologic drugs. The Committee bill specifies that in determining whether such a consultant is qualified to conduct this review, the Secretary is to take into account the needs of nursing facilities to have access to the services of such a consultant on a timely basis.

The Committee has added this specification to the OBRA 87 law in response to the provisions of the Department of Health and Human Service's 1992 proposed regulations to implement this review requirement. Under the proposed regulations, the annual drug plan review is to be conducted a physician who has training or experience in geriatrics and psychopharmacology (57 Fed. Reg. 4516, 4518 (February 5, 1992)). It is the Committee's understanding that such individuals may not be widely available across the country and that consequently, some nursing facilities may have difficultly in securing the required expert services on a timely basis. It is the Committee's intent, therefore, in including this new specification, that the Secretary consider, in developing final regulations, the availability of professional experts to nursing facilities to carry out the annual drug review plan requirements of OBRA 87. Although the Committee takes no view as to the appropriate credentials or experience required for such individuals, it does intend that the Secretary's regulations allow for qualified individuals to whom nursing facilities have reasonable access.

(c) Increase in minimum amount required for separate deposit of personal funds.–Under current law, a nursing facility must deposit any amount of a resident's personal funds in excess of $50 in an ****549*222** interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest to such separate account. The Committee bill raises the minimum amount to which this requirement applies to $100.

(d) Due process protections for nurse aides.–Under current law, States are required to establish, maintain, and make available to the public, a nurse aide registry containing information about all individuals who have satisfactorily completed either a nurse aide training and competency evaluation program or a nurse aide competency evaluation program. Such information is to include documented findings of resident neglect or abuse or misappropriation of resident property involving any individual listed in a State registry.

Current law further requires that States provide for a process for the investigation and timely review of allegations of resident neglect or abuse, or misappropriation of resident property. Such a process is to include notice of the allegations made to the individual nurse aide involved as well as an opportunity for a hearing for such an aide to rebut such allegations.

The Committee bill includes two provisions designed both to allow for better implementation of these requirements and to ensure that allegations of nurse aide misconduct are appropriately and fairly addressed.

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(1) Prohibiting State From Including Undocumented Allegations in Nurse Aide Registry.–As noted above, current law states what information is to be included in State nurse aide registries. The Committee bill specifies what information is not to be included in such registries: any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by a State.

(2) Due Process Requirements for Rebutting Allegations.–As also noted above, current law outlines the components that are to be included in the State process for the investigation and review of allegations of misconduct made against nurse aides. The Committee bill clarifies that this process is to include:

(i) Written notice of the allegations (including a statement of the availability of a hearing to rebut the allegations) to the individual aide involved;

(ii) An opportunity for such individual to have a hearing on the record; and (iii) a written finding by a State as to accuracy of the allegations.

Subchapter C–Miscellaneous and Technical Corrections Relating to OBRA–1990

Sec. 5151. References in subchapter; effective date

The Committee bill provides that the amendments in this Subchapter are generally effective as if included in the enactment of OBRA 90.

Sec. 5152. Corrections relating to section 4402 (enrollment under group health plans)

The Committee bill corrects an erroneous reference in section 1906 of the Social Security Act, which requires Medicaid payment ****550*223** of premiums and cost-sharing for enrollment in group health plans where cost-effective.

Sec. 5153. Corrections relating to section 4501 (low-income medicare beneficiaries)

The Committee bill corrects technical errors in section 4501 of OBRA 90, relating to the phase-in of Medicaid payments for Medicare premiums for certain individuals with income below 120 percent of the official poverty line.

Sec. 5154. Corrections relating to section 4601 (child health)

The Committee bill makes technical corrections to section 4601 of OBRA 90, relating to eligibility of children for Medicaid coverage.

Sec. 5155. Corrections relating to section 4602 (outreach locations)

The Committee bill corrects erroneous references in section 1902(a)(55) of the Social Security Act, relating to mandatory use of outreach locations other than welfare offices. The Committee bill also deletes unnecessary language from section 1902(1)(1) of the Act, which describes poverty level-related pregnant women, infants, and children, to clarify that States are not required to determine whether these individuals are eligible for Aid to Families with Dependent Children.

Sec. 5156. Corrections relating to section 4604 (payment for hospital services for children under 6 years of age)

The Committee bill makes technical corrections to references in sections 1902(a)(10), 1902(s), and 1923(a)(2)(C) of the Social Security Act relating to payments for hospital services for children under 6.

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Sec. 5157. Corrections relating to section 4703 (payment adjustments for disproportionate share hospitals)

The Committee bill corrects technical errors in section 1923 of the Social Security Act, relating to payment adjustments for disproportionate share hospitals.

Sec. 5158. Corrections relating to section 4704 (Federally-qualified health centers)

The Committee bill corrects technical errors in references in sections 1903(m) and 1905(l) relating to Federally-qualified health centers.

Sec. 5159. Corrections relating to section 4708 (substitute physicians)

The Committee bill conforms Medicaid policy relating to payments for substitute physician services to Medicare policy set forth in section 5013(b) of the Committee bill.

****551*224** Sec. 5160. Corrections relating to section 4711 (home and community care for frail elderly)

The Committee bill makes technical and minor corrections to section 1929 of the Social Security Act, relating to home and community care for functionally disabled elderly individuals.

Sec. 5161. Corrections relating to section 4712 (community supported living arrangement services)

The Committee bill makes technical and minor corrections to section 1930 of the Social Security Act, relating to community supported living arrangements services to developmentally disabled individuals.

Sec. 5162. Corrections relating to section 4713 (COBRA continuation coverage)

The Committee bill corrects technical errors in references in sections 1902(a)(10) and 1902(u) of the Social Security Act relating to COBRA continuation coverage.

Sec. 5163. Corrections relating to section 4716 (Medicaid transition for family assistance)

The Committee bill corrects an erroneous reference in section 4716(a) of OBRA 90.

Sec. 5164. Corrections relating to section 4723 (Medicaid spenddown option)

The Committee bill makes technical corrections to section 1903(f)(2) of the Social Security Act, relating to the Medicaid spenddown option for families.

Sec. 5165. Corrections relating to section 4724 (Optional State disability determinations)

The Committee bill corrects erroneous references in section 1902(v) of the Social Security Act, relating to optional State disability determinations.

Sec. 5166. Corrections relating to section 4732 (special rules for health maintenance organization)

The Committee bill corrects an error in section 1903(m) of the Social Security Act, relating to special rules for HMOs.

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Sec. 5167. Corrections relating to section 4741 (home and community-based waivers)

The Committee bill clarifies that waivers granted under the authority of section 1915(d) may include waivers of freedom of choice insofar as they relate to the provision of case management services and the State provides satisfactory assurances that the waiver will not substantially limit access to such case management services.

Sec. 5168. Correction relating to section 4744 (frail elderly waivers)

The Committee bill clarifies that the provisions of section 1924 (relating to spousal impoverishment protections) apply to individuals receiving services from On Lok Senior Health Services under ****552*225** waivers authorized under section 603(c) of the Social Security Amendments of 1983, P.L. 98–21.

Sec. 5169. Corrections relating to section 4747 (coverage of HIV-positive individuals)

The Committee bill makes technical corrections to the authorization for two demonstration projects to provide Medicaid coverage for HIV-positive individuals contained in section 4747 of OBRA 90.

Sec. 5170. Corrections relating to section 4751 (advance directives)

The Committee bill clarifies that the advance directives requirement applies to entities contracting with Medicaid on a risk basis that are not health maintenance organizations under section 1310 of the Public Health Service Act.

Sec. 5171. Corrections relating to section 4752 (physician's services)

The Committee bill clarifies that delivering services in an emergency room of a hospital participating in Medicaid is one of the grounds on which a physician may qualify to receive Medicaid payments for providing services to eligible children or pregnant women.

Sec. 5172. Corrections relating to section 4801 (nursing home reform)

The Committee bill makes minor and technical corrections to section 1919 of the Social Security Act relating to nursing home reform.

Sec. 5173. Other technical corrections

The Committee bill makes technical corrections to sections 1905(o) and 1915(d) the Social Security Act.

Sec. 5174. Corrections to designations of new provisions

The Committee bill makes technical corrections to designations of new provisions in Title XIX of the Social Security Act made by OBRA 90.

Chapter 2–Universal Access to Childhood Immunizations Program (UAIP)

Sec. 5181. Establishment of Entitlement and Monitoring Programs with Respect to Childhood Immunizations

Childhood immunization is generally agreed to be one of the most cost-effective medical procedures. Even though the cost of this service has risen dramatically over the last decade (from approximately $24 to approximately $240), protection against

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such once-common diseases as polio, whooping cough, and measles still is estimated to save as much as $90 for every dollar invested.

Unfortunately, although it is virtually universally recommended, immunization of young children is very low in many areas and many groups in the U.S. While comprehensive data are difficult to obtain, sample data indicate that age-appropriate immunization may be as low as 40 percent nationwide and as low as 10 percent in some inner-city areas.

****553*226** The result of such seriously inadequate immunization rates is all too apparent. Recent outbreaks of measles have occurred around the nation have resulted in costly hospitalization, disability, and death. The Centers for Disease Control and Prevention (CDC) has estimated that the recent outbreak of measles–a completely preventable disease–resulted in 55,000 cases of measles, 44,000 hospital days, and 130 deaths, at an overall direct cost of $150 million.

The cause of such low immunization rates is complex. During the last twelve years, the cost of a full-course of immunizations has risen dramatically because of increased vaccine prices, new excise taxes, and the approval of additional vaccines. At the same time as these costs have risen, however, the Federal support for immunization programs has not kept pace. The result has been an evisceration of clinic and outreach services by State and non-profit agencies.

Compunding this problem is the increasingly common shift of patients from private practices into public clinics. Pediatricians treating patients without insurance for vaccine benefits recognize that the $240-per-child cost of vaccines alone is a significant out-of-pocket expense for many families and increasingly refer these patients to public clinics at which vaccines are free. This shift has three significant disadvantages: First, the influx of new patients is overloading already underfunded public clinics. Second, the care of these patients becomes fragmented between providers. And third, there is evidence that many of the children referred from private practitioners do not reach public clinics in a timely manner, leaving them unimmunized for long periods of time.

(a) In general.–Section 5181 establishes a new Subtitle 3 of Title 21 of the Public Health Service (PHS) Act dealing with childhood immunizations, entitled “Entitlement and Monitoring Programs with Respect to Childhood Immunizations.”

Part A–Entitlement progam

Sec. 2151. Delivery to States of sufficient quantities of pediatric vaccines

Section 2151 establishes a new Universal Access to Immunizations Program (UAIP), under which the Secretary of HHS will provide adequate amounts of vaccine to each State to immunize fully every eligible child within the State. Eligible children are defined to be children eligible for Medicaid, children without any form of health insurance (including indemnity plans, pre-paid plans, and ERISA plans), children with insurance but without coverage under those plans for immunization, or children who are Indians.

The Committee has undertaken this new obligation in an effort to lower rates of disease and to increase rates of immunization. While the Committee notes that there are significant additional measures that must be undertaken in order to accomplish these goals (see provisions for immunization infrastructure, described at Part C, below), the Committee believes that the provision of free vaccine to children who do not have third-party insurance for it will eliminate any possible vaccine cost barriers that may exist and will lessen the procrastination by parents that results in failure to immunize children in a timely manner. The Committee recognizes ****554*227** that there is legitimate concern about the potential under this program that the federal government will provide free vaccine to children whose families can afford immunization. However, the Committee believes that the benefits to society of immunizing all children, regardless of income, against preventable childhood diseases far outweigh the risk that some children may receive free vaccine even though they may be able to afford to pay for it.

Sec. 2152. Entitlements

Section 2152 establishes this Program as an entitlement program and describes the entitlements provided.

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States are entitled to have the Secretary provide sufficient vaccine to immunize all eligible children. This obligation is undertaken by the Federal government in advance of appropriations acts and is binding regardless of the availability of appropriated funds or of discretely segregated or named funds or accounts. The Committee has adopted this entitlement approach because it believes that the commitment to provide vaccine against preventable disease must be constant and certain and that States that come to rely on the Federal promise to provide vaccine must be protected against possible shortfalls. Funding by any other mechanism is inherently less reliable than the guarantee that is authorized here and could place States and their citizens at risk of outbreaks of serious disease.

In addition to the States' entitlement to adequate amounts of vaccine, Section 2152 also establishes entitlements of children and health care providers. As a condition to participation in the UAIP, the States must agree that every eligible child in the State has an entitlement to receive vaccine without charge and that every program-registered provider has an entitlement to receive vaccine for administration to eligible children.

The Committee has provided these additional entitlements as a means to ensure that the UAIP reaches all children and all willing providers. While providers are not required to participate in the Program, States may not restrict the availability of free vaccine if a provider is willing to participate and is otherwise qualified to administer immunizations under applicable law. The Committee seeks to forestall any attempt by a State to require that patients be referred from a qualified, willing provider to another site. The Committee does so because it believes that such referrals often result in a postponement of immunization or failure to immunize. The Committee also seeks to assure continued freedom of choice of providers for eligible children.

The Committee recognizes that enforcement of the entitlement rights for providers may, in many cases, be of little value to provide but great value to the eligible children who may wish to be served by that provider. The Committee has, therefore, provided for enforcement of that right by representatives of eligible children.

Section 2152 also establishes the effective date of the UAIP entitlements to be October 1, 1994. In addition, the UAIP entitlements are limited to the extent that there is a purchase contract in place with manufacturers of vaccine. This latter limitation is provided only for situations in which it is truly not possible for the Secretary to negotiate a contractual arrangement for the purchase of vaccine, and the Committee emphasizes that it believes that, once undertaken, ****555*228** the Federal commitment to the States and to the eligible children in the State should be interrupted only in the most serious circumstances.

Section 2152 also provides for submission of an application by the State in order to participate in the UAIP. Entitlements begin upon submission of an acceptable application, and the Secretary must review the application within 30 days of its receipt. (If the application is not denied within 30 days, it is deemed to have been accepted.) If an application is determined by the Secretary to be unacceptable and is subsequently resubmitted in an acceptable form, the Secretary, at her discretion, may provide that the entitlements under this section begin either at the time that the initial application was submitted or at the time that the acceptable application was submitted. The Committee has provided for this discretionary judgment in an effort to give the Secretary the authority to allow the correction of good-faith or insubstantial errors without penalizing States or eligible children; if, however, the Secretary finds that the States are not proposing to comply with the requirements of the UAIP, the Secretary is not required to honor requests for free vaccine.

Sec. 2153. Voluntary participation of health care providers

Section 2153 establishes the conditions under which providers may participate in the UAIP. These conditions are simple, and the Committee intends that both the Secretary and the States implement them in a similarly simple manner so as to encourage providers to participate and yet maintain accountability for the Program.

Providers (defined as any care authorized or allowed under State law to administer vaccines) are required simply to submit an application to participate in the Program. The providers must agree to ask parents if the child is eligible for the UAIP, maintain records as the Secretary requires, and–upon request–make the records available to the State. Records are intended only to be used for purposes of audit of the Program. Providers also must agree not to charge for vaccine supplied by the UAIP. Providers may, however, charge for the administration of the vaccine, although providers must agree not to turn away

an eligible child if the parent certifies that the parent is unable to pay the administration charge.

Providers are not required to administer free vaccine to every eligible child who seeks immunization. While the Committee hopes that providers participating in the UAIP will endeavor to make Immunization services widely available, the Committee also recognizes that providers have legitimate interests in limiting their practices to a manageable volume and that attempts to require providers to serve all children could result inadvertently in fewer providers being willing to participate in the Program.

Providers also are not required to verify information given to them by parents. If parents claim that a child is eligible for the Program as a member of one of the enumerated classes of eligible children, the provider need not seek additional corroboration of that claim. The Committee recognizes that this policy is likely to allow some mistaken or fraudulent claims to be made by parents, but the Committee believes that a requirement that providers act as investigators or as regulators in this instance would result in ****556*229** significant disincentives for providers to participate and for parents to seek services. Rather than risk this outcome, which would perpetuate current Low immunization rates, the Committee acknowledges that some free vaccine may go to ineligible children.

Sec. 2154. Intrastate Distribution of Pediatric Vaccines

Section 2154 establishes general measures for the distribution of pediatric vaccines by the States. In general, the Secretary is required to establish criteria for the delivery of vaccines to providers within six months of enactment.

These criteria are to include measures to encourage private health care providers and Indian health providers to participate in the UAIP. These criteria are also to take into account the ability of parents to speak English and to require that States have a plan to administer vaccines through providers who can communicate with the intended populations.

In general, the Committee intends that existing effective distribution systems within states should be left in place.

Sec. 2155. General provisions

Section 2155 provides for establishment of standards of compliance for States and providers under the UAIP. The Secretary is required to establish such standards within six months of enactment.

Those States with laws in effect as of May 1, 1993, that require that some or all insurance plans require some coverage with respect to vaccine are not allowed to modify or repeal such laws in a manner that reduces the amount of currently required coverage. States that modify or repeal such laws in such a manner will lose their entitlement to free vaccine under the UAIP. As with the provisions of 5181(d) (described below), the Committee has adopted this requirement to forestall any attempts to decrease the amount of private insurance coverage that currently exists for vaccine. The Committee has crafted this legislation to have a limited pool of eligible children and does not intend States or private insurers to shift costs now borne by private third-party payors onto the UAIP.

Additionally, as of 1998, the Secretary may provide free vaccine only to those States that are operating a vaccine registry in accordance with Part B (described below).

Sec. 2156. State option regarding immunization of additional categories of children

Section 2156 establishes a State option regarding immunization of additional categories of children within the State. States may elect to purchase vaccine at the price negotiated by the Secretary. If a State elects this option, it must include in its application for the UAIP (under section 2152) description of the categories of children to be served, provide the Secretary with estimates of the vaccine needed, and agree to serve these children to the same extent and in the same manner as it serves eligible children under the UAIP. The Secretary's obligation to provide vaccine under this option is limited to the vaccine that has been made available under manufacturers' contracts (described in Section 2158, below). If multiple contracts with multiple prices are in effect, the Secretary is authorized to determine which contract is available to States electing ****557*230**

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this option. The Committee does not intend to limit State's current ability to negotiate independently for vaccine purchasers, if they do not elect this option.

Sec. 2157. State application for vaccines

Section 2157 establishes general provisions for States' applications for vaccine. If a State has not applied for vaccine under the UAIP by 1998, the Secretary must terminate payment to the State under the Preventive Health Services Block Grant (Title 19 of the PHS Act), unless the State already has a program of free vaccine for eligible children or has met the Year 2000 goals for immunization of children under the age of 2.

Sec. 2158. Contracts with manufacturers of pediatric vaccines

Section 2158 establishes provisions regarding the Secretary's contracts with manufacturers of pediatric vaccines. The Secretary is required to enter periodically into negotiations with manufacturers of such vaccines to maintain contracts to purchase vaccines for States entitled to receive them for eligible children and to allow purchase by States exercising State options (as described in Section 2156, above). The Secretary is to enter into initial negotiations within six months of enactment.

In negotiating the purchase price for these vaccines, the Secretary is to allow for a reasonable profit for manufacturers. In determining a reasonable cost/profit, the Secretary is to consider the costs of research, development, and production of the vaccine; the costs of research and development of new and improved vaccines; and the costs of shipping and handling. Information supplied by a manufacturer for these purposes shall be treated in a confidential manner by the Secretary and penalties are provided for breaches of that confidentiality. The Secretary is also to negotiate a contract that provides for shipping and handling of the vaccine and may not agree to a contract that imposes subsequent additional charges for delivery. The Secretary is also to negotiate for the maintenance of a six-month supply (or a "stockpile") of vaccines to meet unanticipated needs for vaccines. The Secretary may enter into or decline to enter into contracts and may, with the consent of the manufacturers involved, modify or extend contracts. Contracts are to be for an agreed duration and may be for periods in advance of appropriations. The Secretary shall, as appropriate, enter into a contract with each manufacturer that meets the terms and conditions of the Secretary (including terms and conditions regarding safety, quality, and price) and the Secretary may provide for different prices under each contract.

The Committee recognizes that vaccine manufacturers are, in general, commercial entities and, as such, they require return on investment as well as that certain information be maintained in a manner that prevents unfair competition. The Committee intends that the Secretary's negotiations accommodate these concerns and, in turn, hopes that manufacturers will, to the greatest extent possible, cooperate with the Secretary in assuring that all American children receive immunizations. By assuring that a portion of the vaccine market remains private and not subject to government contract, the Committee has attempted to meet manufacturers' requests ****558*231** that they be allowed to continue to cross-subsidize public purchases through private sales.

The Committee also intends that the Secretary conduct negotiations in a manner that will ensure the continuation of research and development toward new, better, and safer vaccines. (The Committee notes, for example, that vaccines that could be administered in one shot without repeat office visits would facilitate all immunization efforts and greatly reduce administration costs. Similarly, a vaccine with fewer side effects and reactions would reduce medical and human costs and reassure the public about safety of preventive measures.) The Committee recognizes that much of vaccine innovation is conducted in the private sector by manufacturers and intends that the Secretary act to foster such innovation through every means available to her. The Committee has not adopted the UAIP principally as a cost-cutting measure (although economies are welcome and expected) but rather as a public health measure. To the extent that increases in negotiated prices can be justified as subsidizing research and development necessary for the improvement of public health, the Committee intends for the Secretary to allow such increases.

The Committee also intends that the Secretary negotiate and contract for only those vaccines that are of the highest quality and safety and consistent with public health standards. If, for example, one vaccine provides significantly improved immunity to a serious disease, the Secretary should be prepared to contract for that vaccine over one that provides less

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immunity, even if the price for the vaccine is higher. Correspondingly, if a vaccine provides fewer severe side effects, the Secretary should be prepared to contract for that vaccine over one that provides more or graver side effects, even if the price for the vaccine is higher. Again, the Committee has not adopted the UAIP principally as a cost-cutting measure but rather as a public health measure. If public health is undercut by low-bidding vaccines, the Secretary should not accept such false economies.

The Committee intends that vaccine manufacturers retain their ability under these contract provisions to distribute pediatric vaccines through independent drug wholesalers. Manufacturers may elect to subcontract the shipping, handling, and related distribution functions to such wholesalers. Independent drug wholesalers frequently have served these functions in the past.

Recognizing that the manufacturing process for vaccines is complex and has specific physical plant requirements, the Committee understands that manufacturers may be reluctant to enter into a market that might have varying conditions and demands. The Committee has, therefore, provided the Secretary with the unusual authority to provide multi-year contracts to allow for stability of vaccine supply.

Also recognizing that the Federal market share in the vaccine industry will be substantial under the UAIP, the Committee has provided that the Secretary shall, as appropriate, enter into a contract with each of the manufacturers that meets the terms and conditions of the Secretary. The Committee has adopted this provision to assure that Federal contracts under the UAIP encourage competition and ensuing innovation and efficiency. In order to do so, ****559*232** the Secretary may, at her discretion, also allow for different prices from different manufacturers.

Sec. 2159. Certain administrative variations

Section 2159 provides for the administration of the UAIP with respect to Indian tribes and tribal organizations and with respect to States that manufacture vaccines.

For purposes of the UAIP, tribes and tribal organizations are entitled to such quantities of pediatric vaccines as are necessary to immunize each Indian child in the State in which they are located. In turn, each tribe or tribal organization must agree to administer the vaccine to the same extent and in the same manner as States do with regard to other eligible children.

If a State manufacturers vaccines and uses such vaccines for its eligible children, the Secretary is to provide the State an amount equal to the value of the vaccine that would otherwise have been provided to the State under the UAIP. To determine the value of that vaccine, the Secretary is to use the contract price of the UAIP and, if multiple prices are in effect, is to use the weighted average of such prices. Funds received by such States in lieu of vaccines may only be used for purposes relating to pediatric vaccines, such as improving access through expanded clinic hours, lowered administration fees, or outreach and education.

Sec. 2160. List of pediatric vaccines; schedule for administration

Section 2160 requires that the Secretary provide for a list of recommended pediatric vaccines, subject to medical contraindications. The list is to be reviewed periodically and revised as appropriate. The list of vaccines established by the Advisory Committee on Immunization Practices (ACIP), an advisory committee established by the Secretary acting through CDC, is deemed to be the Secretary's list for purposes of this section.

The Secretary is also to establish and periodically review and us, appropriate, revise a recommended schedule for administration of vaccines. These recommendations are non-binding and should include consideration of the number and dosage of immunizations, the age at which children should be immunized, and contraindications regarding immunization. The schedule is also to provide for the full range of variations in medical judgment within the norms of practice regarding administration of vaccines. The schedule is to be established and maintained by the ACIP.

This list and these guidelines are not to be considered guidelines, standards, performance measures, or review criteria for purposes of the Agency for Health Care Policy and Research under Title 9 of the PHS Act or under Section 1142 of the Social Security Act.

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The Committee intends that the ACIP be allowed to conduct its work in an objective manner, concerned only with issues of public health and medicine. While decisions regarding the listing of recommended vaccines will, undoubtedly, have some budget implications for the UAIP and the Secretary, it is the Committee's intention that ACIP's work be rigorously separated from such concerns. The Committee is troubled by past examples of budgetary influence in matters of science and has chosen the ACIP of the CDC as a committee less vulnerable than some others to such influence. So, ****560*233** for example, if the ACIP were to decide that one vaccine that produces side effects and reactions should be replaced with a more expensive vaccine that does not, neither the Secretary nor any other officer should attempt to affect that judgment. If proposed changes present a budget implication so serious as to cause the Secretary to question their validity, the Secretary should present that concern and a proposed legislative change to the Congress, but until legislative change is made, the entitlements of States to ACIP-recommended vaccines are to continue in effect.

This section is not to supersede any State law on requirements with respect to receiving immunizations. The UAIP is intended as a source of financing for vaccines and the list and guidelines are established to facilitate that goal and not to replace State decisions and medical practice regarding immunization. The Committee recognizes that States traditionally are responsible for the establishment of all rules regarding requirements for and exemptions from immunization and the Committee does not intend to displace States from that role. The Committee understands that State laws make exceptions to immunization laws for a number of reasons (most commonly religious, medical, or philosophical objections) and the Committee does not intend to supersede or interfere with these exceptions.

Sec. 2161. Childhood immunization trust fund

Section 2161 establishes a Trust Fund in the Treasury of the United States to assist the Secretary in carrying out activities of the UAIP. This Trust Fund is to be used to receive funds appropriated, funds directed from the Internal Revenue Code, and any income earned from investment of the Trust Fund.

The Committee emphasizes that this Trust Fund is an accounting device employed to facilitate the actions of the Secretary. The Trust Fund does not represent limits on the Secretary's actions or obligations under the UAIP. If, for some unforeseen reason, the Trust Fund has not been supplied with sufficient funds to meet these obligations, the Federal government must meet them with other funds, including general revenues. While the Committee does not anticipate such an eventuality, it is not willing to risk possible outbreaks of polio or measles because of accounting or allocation problems. As stated above, the Committee has created an entitlement by States to vaccines because it believes that the commitment to provide vaccine against preventable disease must be constant and certain and that States that come to rely on the Federal promise to provide vaccine must be protected vaccine against preventable disease must be constant and certain and that States that come to rely on the Federal promise to provide vaccine must be protected against possible shortfalls. Funding that is less reliable than the full entitlement guarantee would place States and their citizens at risk of outbreaks of serious disease.

Sec. 2162. Definitions

Section 2162 establishes definitions for purposes of the UAIP.

****561*234** Sec. 2163. Termination of program

Section 2163 provides for the termination of the UAIP. The Program is to terminate on such date as may be prescribed in Federal laws that provides for immunization services for all children as part of a broad-based reform of the National health care system. Anticipating that systemic reform of the health care system will provide for preventive services for children, the Committee has included this Program termination to allow for alternative means of assuring the universal access to immunization services other than the UAIP.

Part B–National system for monitoring immunization status of children

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Sec. 2171. Formula grants for State registries with respect to monitoring

Section 2171 establishes a new discretionary grants program (to be administered by CDC) within Title 21 of the PHS Act for the purpose of developing and maintaining State registries containing information relating to the immunization status of the Nation's children. Under Section 2155 (discussed above), a State is required to operate such a registry as a condition of receiving free vaccine under the Universal Access to Immunizations Program (UAIP) established in Section 2151 (also discussed above). Information collected through this system is to be used to monitor the extent to which children in a State have been immunized appropriately and to notify parents of the need to have their children vaccinated on a timely basis.

States are required to have a registry in place not later than October 1, 1996, and to have in effect any such laws and regulations as may be necessary to operate the registry. Section 2171 specifically provides, however, that such laws may allow for an exemption for the collection of data on any child residing in a State if a parent of such a child makes such a request. The Secretary may not prohibit a State from creating such an exemption as a condition of receiving funds under this section.

The Committee has taken this view in response to concerns that have been raised by many parents about their desire to maintain the privacy of their children's medical records. While the Committee believes the legislation includes sufficient safeguards both to maintain the confidentiality of the information included in a State immunizations registry and to protect against any inappropriate disclosure of such information, it recognizes that some families simply may prefer to keep their children out of the State system. Section 2171 allows States to provide for such action and, at the same time, to participate in the State registries grants program.

Sec. 2172. Registry data

Section 2172 specifies the data that are to be collected under a State immunizations registry system. Such data include information relating both to the birth of any child living in the State involved and to such child's individual immunizations history. In each instance, the relevant data are to be provided to the State registry ****562*235** within six weeks after either the birth of a child or the administration of a pediatric vaccine to a child.

The Committee notes that under this section, the Secretary is authorized to require States to use Social Security numbers (including those of parents) as a means of identifying individual children listed in a State registry. The Committee underscores the discretionary nature of this Secretarial authority and emphasizes the Secretary's obligation to proceed in such a fashion only in accordance with the applicable requirements of the Social Security Act (see Section 5181(b), below). Such requirements are designed to protect against abuse and unauthorized disclosures and should, in the view of the Committee, serve to alleviate parental fears of potential misuse of private Social Security information.

Sec. 2173. General provisions

Section 2173 establishes two sets of general requirements for the establishment of State immunizations registries.

The first set of general requirements provides for additional privacy protections for individuals and their families whose names appear in a State immunizations registry. Under Section 2173, the Secretary is required to establish Federal confidentiality standards regarding the identity of the individuals included in a State registry. Such standards are to include a requirement that each State have in effect laws regarding the confidentiality of information included in its immunizations registry. The section provides further that any use or disclosure of data in a State registry that consists of Social Security account numbers and related information may be exercised only to the extent permitted under the Social Security Act (see Section 5181(b), below).

The second set of general requirements describes operating procedures for carrying out the State Immunizations Registry Program. Such procedures are designed to ensure that the data provided through the State registries are obtained and used properly and include appropriate information that should prove helpful in achieving the HHS Year 2000 objectives for immunizing the Nation's children. Section 2173 specifically provides, therefore, that the Secretary is to establish standards regarding the methodologies used in establishing and operating State registries, including standards that provide for a

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reasonable degree of uniformity for such methodologies among the States. The section also requires with respect to the operation of a State registry that each State cooperate both with the Secretary and with other States in carrying out activities related to the HHS Year 2000 goals for childhood immunizations.

Section 2173 also requires that States submit to the Secretary such reports as the Secretary determines to be appropriate with respect to the activities carried out in accordance with the State Immunizations Registry Program. The Committee intends that any information required to be contained within any such report be provided to the Secretary in accordance with the confidentiality standards established under this section.

****563*236** Sec. 2174. Application for grant

Section 2174 establishes the application standards for States seeking State immunizations registry grant funds. Under Section 2174, States are required to submit an application to the Secretary in accordance with the terms and conditions set forth by the Secretary.

Sec. 2175. Determination of amount of allotment

Section 2175 provides authority to the Secretary to determine the amount of allotment each State is to receive for establishing and operating its immunizations registry. Under this section, such allotments are to be determined in accordance with a formula established by the Secretary on the basis of the costs of the States in carrying out registry programs.

Sec. 2176. Definitions

Section 2176 establishes definitions for purposes of the State Immunizations Registry Program.

Sec. 2177. Authorization of appropriations

Section 2177 establishes a six-year authorization of appropriations for the State Immunizations Registry Program. For FY 1994, the authorization level is set at $50 million. This amount increases over the next two fiscal years to $125 million for FY 1996 and then decreases to $35 million for each of FY 1997 through FY 1999.

Part C–Funding for other purposes regarding childhood immunizations

Sec. 2181. Grants regarding year 2000 health objectives

Section 2181 establishes in title 21 of the PHS Act a new childhood immunizations grants program. This Program replaces a similar program which, for many years, has been supported through Section 317 of the PHS Act (which is repealed under Section 5181(c), below).

The purpose of this program is to support various activities designed to help achieve the HHS Year 2000 Health Objectives for immunizing the Nation's children. Such activities are to include all of those previously funded through the 317(j) program with the exception of the purchase and delivery of vaccines. Because those efforts will now be carried out through the new UAIP (established under Section 2151, above), it is the Committee's view that additional authority for such activities is not necessary. Thus, Section 2181 specifically prohibits the use of grant funds for the purchase and delivery of pediatric vaccines.

The Committee has established this new program with the intention that it be used to make needed improvements in the public health infrastructure that is critical in providing access to local immunization services. The vaccines purchased under the new Universal Access Program will simply sit on the shelves of public health clinics unless their doors can remain open during accessible hours and unless there are health care providers available to provide shots. Similarly, immunization rates

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for young children will not improve unless parents are educated about the benefits of vaccines ****564*237** and the potential health risks involved in leaving their children unprotected against preventable diseases. Thus, the Committee has designed this new immunization effort to provide adequate support for these kinds of activities and, in turn, to help ensure that the Nation's vaccine infrastructure is solidly in place.

(b) Authority to use Social Security account numbers.–Subsection (b) of Section 5181 amends the Social Security Act to provide authority for the use of Social Security number in carrying out the State Immunizations Registry Program described in Section 2171, above. Such provisions include restrictions on the use of such numbers under the registry program. Such provisions also require the Secretary to issue regulations governing the use, maintenance, and disclosure of Social Security account numbers and related information through this Program.

(c) Conforming amendments regarding grants for immunizations.–Subsection (c) of Section 5181 makes conforming amendments regarding the immunization program currently authorized under Section 317 of the PHS Act.

(d) Continued coverage of costs of a pediatric vaccine under group health plans.–Subsection (d) prohibits a group health plan from reducing its coverage of the costs of pediatric vaccines below the coverage it provided as of May 1, 1993. If a group health plan does reduce its coverage of the costs of pediatric vaccines, it will be penalized in the same manner as if it had violated the requirements of Title XXI of the Public Health Service Act, Section 4980B of the Internal Revenue Code of 1986, or Part 6 of subtitle B of Title I of the Employee Retirement Income Security Act, whichever is applicable. (The provisions referred to apply to requirements for continuation of health insurance for public employees, private health insurance, and self-funded group plans, respectively.)

As with Section 2155, described in subsection (a) above, the Committee has adopted this requirement to forestall any attempts to decrease the amount of private insurance coverage that currently exists for vaccine. The Committee has crafted the UAIP legislation to have a limited pool of eligible children and does not intend States or private insurers to shift costs now borne by private third-party payors of any type onto the UAIP. The Committee intends that this provision be interpreted broadly to include all variations of the designated plans and to be applied clearly and firmly to prevent unnecessary fragmentation of coverage and inappropriate Federal expense. It is the Committee's understanding that parallel measures will be proposed by the Education and Labor Committee and the Ways and Means Committee for those statutes within their jurisdiction.

Sec. 5182. National Vaccine Injury Compensation Program amendments

The National Childhood Vaccine Injury Act of 1986 (P.L. 99–660) created a system for compensating children for injuries received for routine pediatric immunizations. The Vaccine Compensation Amendments of 1987 (P.L 100–203) provided for a source of payment for such compensation and began the functioning of the system.

****565*238** Since that time, the U.S. Claims Court, which was designated as the forum for the resolution of these vaccine injury claims, has received more than 3,000 petitions for compensation for injuries associated with vaccines administered before October 1, 1988, the effective date of the Program ("pre-enactment cases"). Fewer than 500 claims have been received for compensation for injuries associated with vaccines administered after the program effective date ("post-enactment cases").

In addition, vaccine prices, which had skyrocketed as much as 2,000 percent before the enactment of the compensation system, have stabilized. Indeed, some manufacturers have demonstrated renewed interest in the U.S. vaccine market.

Throughout the program's history, however, a number of implementation problems have emerged that have required changes in the original statutory language. The last revisions of the underlying law were made in 1991 (P.L. 102–168). Since that time, a number of additional technical and substantive issues have developed.

None of these problems is more pressing than the shortage of funds needed to pay compensation awards for successful pre-enactment cases. Under the 1987 law, awards made for such cases are to be paid from general revenues which cannot exceed $80 million in a fiscal year. Because of the large number of pre-enactment cases that have been pursued successfully, this amount has proven to be inadequate. Consequently, many pre-enactment cases have yet to be finalized with a

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compensation award; still others remain on the docket of the Claims court awaiting action.

(In contrast to this situation, awards for post-enactment cases are to be paid from the Vaccine Injury Compensation Trust Fund. Despite the problems that have arisen in response to the expiration of the vaccine excise tax which provides support for the Fund, the Trust Fund continues to be financially sound and compensation awards have been made in all successful post-enactment cases. It is the committee's expectation that the vaccine excise tax is to be reinstated by the Ways and Means Committee as part of this legislation and that, as a result, the Trust Fund will continue to be financially sound.)

Because of both the complexity of the financing problem of the pre-enactment cases and the shortened time frame in which the House is acting on the FY 1994 budget, the Committee was unable to take up this funding issue as part of this bill. It is the Committee's intention, however, to attempt to address this problem in legislation later this year. The Committee requests that the Administration provide assistance and guidance in this area, particularly with respect to sources of payment for judgments and contingency plans for shortfalls. In the interim period, however, the Committee has included provisions in this bill designed to make minor improvements in the basic operation of the compensation program.

(a) Use of vaccine injury compensation trust fund.–The original vaccine compensation law provided no authorizations for administrative expenses related to the compensation program. In 1989, however, the law was amended to authorize funds to be used for administrative expenses for both the Departments of Health and Human Services and Justice as well as for the Claims Court (P.L. 101–239). Under current law, each of these entities is to receive ****566*239** $2.5 million in administrative expenses from the Vaccine Injury Compensation Trust Fund. The Committee bill increases this amount for each such entity to $3 million for FY 1994 and each fiscal year thereafter.

(b) Amendment of vaccine injury table.–Under current law, if the Vaccine Injury Table (which specifies covered vaccines as well as injuries, conditions, or disabilities associated with the administration of such vaccines) is revised so as to permit an individual who was not, prior to such revision, eligible to seek compensation, such individual is allow to file a petition for compensation within a specified time period. The Committee bill would also allow individuals to file for compensation if the effect of a revision in the Vaccine Injury Table were to increase significantly the likelihood of such individual's obtaining compensation.

(c) Extension of time for decision.–Under current law, in reviewing proceedings on pre-enactment cases, the chief special master of the Claims court may suspend proceedings on any petition for up to 540 days. The Committee bill extends this period to 30 months (but for no more than six months at a time)

(d) Simplification of vaccine information materials.–Under the 1987 law, the Secretary was required to develop and disseminate vaccine information materials for distribution by health care providers to the parents or guardians of children who are to be immunized with routine pediatric vaccines. The information to be included in such materials was specified in detail in the 1987 statute. The Committee bill simplifies these requirements and provides for a quicker process through which the required information is to be made available.

Sec. 5183. Medicaid immunization provisions.–

Under current law, States participating in Medicaid are required to cover Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services for all eligible children under 21. The screening services element of the EPSDT benefit must, at a minimum, include appropriate immunizations according to age and health history, at intervals which meet reasonable standards of medical practice, as determined by each State. States are required to inform all Medicaid-eligible children under age 21 of the availability of EPSDT services.

(a) Outreach and education.–The Committee bill requires to inform all Medicaid-eligible children under age 21 of the need for age-appropriate immunizations against vaccine-preventable conditions. The bill also requires State Medicaid agencies to enter into agreements with State agencies and other institutions or organizations receiving Maternal and Child Health (MCH) Block Grant funds under Title V providing for coordination of information and education on childhood vaccinations and delivery of immunization services. Finally, the bill requires State Medicaid agencies to provide, or assure the provision of, information and education on childhood vaccinations and the delivery of immunization services with the State's operations under the Special Supplemental Food Program for Women, Infants and Children (WIC).

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(b) Schedule of immunizations under EPSDT.–The Committee bill requires that States, as part of the screening services element ****567*240** of the EPSDT benefit package, cover appropriate immunizations not at intervals established by the State, but according to the schedule recommended by the Secretary under section 2160 of the Public Health Service Act.

(c) Assuring adequate payment rates for administration of vaccines to children.–Under current law, States are required to reimburse for EPSDT and other pediatric services at levels which are sufficient to enlist enough providers so that care and services are available to Medicaid beneficiaries at least to the extent that they are available to the general population in the geographic area. With respect to pediatric services, States must submit, by April 1 of each year, a State plan amendment that specifies, by procedure, the payment rates to be used for pediatric services in the year beginning the following July 1 and that includes data to assist the Secretary in evaluating the State's compliance with the provider participation requirement. The Committee bill clarifies that, for this purpose, pediatric services include the administration of vaccines by health care practitioners.

(d) Denial of Federal financial participation far inappropriate administration of single-antigen vaccine.–The Committee bill denies Federal Medicaid matching funds for single-antigen vaccines, and the administration of such vaccines, in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary).

(e) Requiring Medicaid managed care plans to comply with immunization and other EPSDT requirements.–Under current law, States may contract on a risk basis with managed care plans to deliver covered services, including appropriate immunizations and other EPSDT benefits, to Medicaid-eligible children and other beneficiaries. A review conducted by the Children's Defense Fund (CDF) of a wide range of current Medicaid managed care contracts indicates that many of these contracts between States and plans are not adequately specifying EPSDT services. CDF found that a few of these contracts do not reference EPSDT services at all, that many do not require periodic screenings or specify periodicity schedules, and that some lack immunization requirements. The Committee is concerned that, in cases where contracts between States and plans are ambiguous or silent on EPSDT responsibilities, eligible children may not be able to obtain services within the plan in which they are enrolled and they may be denied services outside the plan when no other provider is authorized to receive payment for services the State believes it has paid the plan to provide. For example, in a study on measles outbreaks conducted by the CDC, it was found that in one city at least 86 percent of the affected children were enrolled in Medicaid managed care plans, which interpreted their contracts with the State to exclude coverage of immunization services.

The Committee bill requires that a risk contract between a State Medicaid agency and an entity: (1) specify which EPSDT services are to be provided under the contract to children enrolled with the entity; (2) specify, with respect to those EPSDT services that are not to be provided under the contract, the steps the entity will take (through referrals, scheduling appointments with appropriate providers, monitoring the receipt of referred services, or other arrangements)****568*241** to assure that such individuals will receive such services; and (3) require the entity to submit periodic reports as necessary to enable the State to meet its reporting requirements under sections 1902(a)(43)(D) (relating to EPSDT screening and referral rates and State participation goals) and 506(a)(2) (relating to progress in achieving the national Year 2000 health status objectives relating to mothers and children). The Committee emphasizes that States are not required to contract on a risk basis for the provision of EPSDT services; however, should they elect to do so, they are responsible for ensuring that the contracts clearly delineate the respective responsibilities of the managed care plans and the State to assure that Medicaid-eligible children have access to the full range of EPSDT services to which they are entitled.

To assure that entities contracting on a risk basis with the State fulfill their obligations to provide the immunization and other EPSDT services specified in the contract, the Committee bill provides for the imposition of a civil monetary penalty in an amount of up to $25,000 for each instance in which an entity fails substantially to provide EPSDT services to the extent specified in its contract with the State.

Sec. 5184. Availability of Medicaid payments for childhood vaccine replacement programs

Under current law, States may not make payment for covered care or services provided to Medicaid beneficiaries to anyone other than the beneficiary or the practitioner or institution providing the service, with certain limited exceptions. The Committee bill allows States, at their option, to make payments directly to vaccine manufacturers participating in a voluntary replacement program. Under such a program, the manufacturer supplies doses of the vaccine to providers that administer it,

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periodically replaces the provider's supply of the vaccine, and charges the State the manufacturer's bid price to the CDC, plus a reasonable premium to cover shipping and handling of returns.

Sec. 5185. Healthy start for infants

In 1991, the Bush Administration began a new Federal demonstration program, known as Healthy Start, to provide grants to help reduce infant mortality rates in selected communities by 50 percent over a five-year period. This action was taken without specific legislative authority, without any guidance from the Congress as to how such a program should be structured or carried out, and without any requirements regarding program accountability. To date, some 15 communities have received funds for Healthy Start projects. Funding for the Program has increased from $25 million in FY 1991 to $79 million in FY 1993. The Administration has requested $100.3 million for FY 1994, far more than the current level of funding for the Migrant Health Center program ($57.3 million in FY 1993), the Health Care for the Homeless Program ($57.0 million in FY 1993), and the Health Care for Public Housing Residents Program ($8.9 million in FY 1993), all of which have a specific statutory authorization. In the view of the Committee, it is inappropriate for a program that consumes resources of this magnitude to continue without specific legislative authority.

****569*242** (a) In general.–The Committee bill amends Part D of Title III of the PHS Act to establish a new Section 330A entitled "Healthy Start for Infants".

(1) Grants for comprehensive services.–The Committee bill authorizes the Secretary to make grants for the operation of no more than 21 Healthy Start demonstration projects for the purpose of reducing, in the geographic area involved, (i) the incidence of infant mortality and morbidity; (ii) the incidence of fetal deaths; (iii) the incidence of maternal mortality; (iv) the incidence of fetal alcohol syndrome; and (v) the incidence of low-birthweight births. The Secretary is required, in providing for a demonstration project in a geographic area, to seek to meet the applicable Year 2000 Health Status Objectives with respect to each of the four program purposes described above.

The Committee bill provides for a three-year authorization of appropriations for the Healthy Start Demonstration Program. For each of fiscal years 1994 through 1997, the Program is authorized at an amount of "such sums as may be necessary." The program sunsets on October 1, 1997.

Each Healthy Start demonstration project is required to provide comprehensive services related to the goal of reducing infant mortality. Such services are to include preventive and primary health services for pregnant women and infants and childhood immunization services (in accordance with the schedule recommended by the Secretary under Section 2160 of the PHS Act, established above). Such services also may include services other than health services (such as transportation and health education services) that have been shown to have a significant impact in helping to reduce infant mortality rates. However, such services may not include inpatient services (except with respect to residential treatment for substance abuse provided in settings other than hospitals).

In providing services under the Program, a Healthy Start demonstration project is to make arrangements with local Migrant and Community Health Centers (authorized, respectively, under Section 329 and Section 330 of the PHS Act) and entities providing health services for the homeless and for residents of public housing (authorized, respectively, under Section 340 and Section 340A of the PHS Act). Such arrangements are to be made only if such a center or entity is providing services in the area where the Healthy Start demonstration project is located and only if such a center or entity is willing to participate in the project's activities.

Applicants for a Healthy Start demonstration grant must both specify the geographic area in which the demonstration project is to be carried out and agree that the project will not be carried out in other areas. The infant mortality rate in the geographic area must equal or exceed 150 percent of the U.S. national average.

Healthy Start demonstration grantees must be a State or local health department, another public or non-profit entity, or a consortium of public or non-profit private entities. The chief executive officer of the State in which a demonstration project is located must approve a Healthy Start applicant as being qualified to carry out the demonstration before the Secretary may make a grant. Similar approval is required to be given by the leadership of any Indian ****570*243** tribe or tribal organization with jurisdiction over any portion of a service area included in the demonstration project.

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Because the Medicaid program now covers all pregnant women and infants with incomes at or below 133 percent of the poverty level, the Committee bill requires that Healthy Start demonstration grantees participate in their State's Medicaid program. If the grantees do not deliver services directly, they must enter into agreements only with providers that do participate in the Medicaid program. This last requirement may be waived in the case of entities, such as free clinics, that do not impose a charge for their services or accept reimbursement from any third party payor.

To ensure that Federal discretionary grant dollars under this demonstration program do not pay for items or services that Federal and State Medicaid funds cover, the Committee bill prohibits the use of Healthy Start grant funds to pay for any service that a State is required or authorized to provide under Title XIX of the Social Security Act to families receiving cash assistance under the Aid to Families with Dependent Children program and poverty level-related infants, children, and pregnant women. These Medicaid services include ambulatory prenatal services during a presumptive eligibility period; early and periodic screening, diagnostic and treatment (EPSDT) services; and targeted case management services. Similarly, Healthy Start grant funds may not be used to pay for services that are covered under a health insurance policy or plan (including employer group health plans or health maintenance organization coverage), or under any Federal or State health benefits program, including the Maternal and Child Health Block Grant under Title V of the Social Security Act.

The Committee bill requires that a Healthy Start demonstration project maintain its expenditures of non-Federal funds for the services it provides at a level that is not less than the level of such expenditures maintained by the project for FY 1991. Such a "maintenance of effort" is also required of each political subdivision in the service area of the demonstration project.

Under the Committee bill, Healthy Start demonstration grant funds may not be expended (i) to provide inpatient services (except with respect to residential treatment for substance abuse provided in settings other than hospitals); (ii) to make cash payments to recipients of Healthy Start health-related services; or (iii) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment (other than mobile medical units). This latter requirement may be waived by the Secretary if she finds that the purposes of the demonstration cannot otherwise be carried out. The amount of funds that a Healthy Start demonstration project may expend on administration and data collection activities may not exceed 10 percent of the grant.

Healthy Start demonstration grantees must provide for a determination of the cause of each infant death in the service area in which the project is located, including making any arrangements with applicable public entities necessary to make this determination. Healthy Start demonstration grantees must also submit annual reports to the Secretary containing specified information.

****571*244** To facilitate community participation, the Committee bill requires each Healthy Start demonstration project to consult with residents of its service area and with public and non-profit private entities that provide program services to such residents both in preparing its application for funds and in operating the project itself.

The Committee bill requires the Secretary to submit to the Congress, not later than February 1, 1998, a report on the Healthy Start Demonstration Program. This report is to include information on (i) the annual reports submitted by the grantees to the Secretary; (ii) the extent to which the various demonstration projects funded under the Program have been cost effective; and (iii) the extent to which (with respect to such projects) the Secretary has been successful in meeting the HHS Year 2000 Health Status objectives relating to infant and maternal mortality.

The Committee bill limits the amount the Secretary may expend for administrative costs (including the provision of technical assistance and program evaluation) in carrying out the Healthy Start Demonstration Program to not more than 5 percent of the amounts appropriated for the program in any fiscal year.

(b) Report for fiscal year 1993.–The Committee bill provides that, in order for any Healthy Start applicant to receive funds for FY 1994, it must provide to the Secretary by April 1, 1994, the required annual report covering FY 1993.

(c) Savings provision.–Notwithstanding the October 1, 1997, sunset of the Healthy Start Demonstration Program, grants made to projects in effect for FY 1994 through FY 1997 are to remain available for obligation and expenditure in accordance with the terms upon which the grants were made.

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(d) Use of general authority under Public Health Service Act.–The Committee bill provides that section 301 of the PHS Act may not be construed as authorizing the Secretary to carry out the Healthy Start Demonstration Program or any demonstration project providing any of the same services.

Sec. 5186. Increase in authorization of appropriations for the Maternal and Child Health Services Block Grant Program

Under current law, the authorization of appropriations for the Maternal and Child Health Services Block Grant Program (Title 5 of the Social Security Act) is permanently set at $686 million. In response to the budget request made by the President for this Program for FY 1994, the Committee bill increases the current authorization level to $705 million for FY 1994.

Sec. 5187. Miscellaneous technical corrections to Public Health Service Act provisions

(a) Compensation for members of National Advisory Council on National Health Service Corps.–The Committee bill provides that members of the National Advisory Council of the National Health Service Corps shall be entitled to receive compensation at rates to be fixed by the Secretary not exceeding the daily equivalent of the annual rates of basic pay for GS–18 employees of the Federal Government.

****572*245** (b) Liability protections for individuals providing services at certain clinics.–The Committee bill clarifies that a community health center (or any other entity described in section 224(g)(4) of the Public Health Service Act) may elect not to participate in coverage under the Federal Tort Claims Act (FTCA) if the center establishes that, on a continuous basis since October 24, 1992, it has been a participant in, and a partial owner of, a nonprofit risk retention group which offers malpractice and other liability coverage to the center. Grants to centers and other entities that elect not to participate in FTCA coverage under this provision are not to be included in the amounts estimated for purposes of withholding funds from the appropriations for the Community Health Center and other affected programs for judgments under the FTCA.

The Committee bill also clarifies that officers and employees of community health centers (and other covered entitles) are covered under the Federal Tort Claims Act, even if they are not health care practitioners.

The Committee bill provides that officers, employees, or contractors of entities described in section 224(g)(4) of the PHS Act are deemed to be employees of the Public Health Service with respect to services provided to individuals who are not patients of the entity only if the Secretary determines that the provision of such services to such individuals is necessary to assure the treatment of patients of such an entity, or that such services are otherwise required to be provided to such individuals under an employment contract (or other similar arrangement) between the individual and the entity.

The Committee bill provides that the Secretary may find, for purpose of TCA coverage, that an entity complies with the risk management, credentialling, and other requirements of section 224(h) of the PHS Act after receiving such assurances and conducting such investigation as she considers necessary.

(c) Elimination of duplication waiver authority for participants in National Health Service Corps.–The Committee bill clarifies that a partial or total waiver or suspension of any service or payment obligations on the part of participants in the National Health Service Corps scholarship or loan repayment programs can only occur whenever, under regulation, compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of the obligation with respect to the individual would be unconscionable.

(d) Clarification of prohibition against resale of drugs under drug rebate agreements.–The Committee bill clarifies that, for purpose of the prescription drug rebate program under section 340B of the PHS Act, a “covered entity” may resell or otherwise transfer a drug obtained at the statutory discount price under the agreement between the manufacturer and the Secretary to another “covered entity” for the use of its patients.

Subtitle C–Communications Licensing Improvement

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PURPOSE AND SUMMARY

Chapter 1 of Subtitle C, the "Licensing Improvement Act of 1993", amends the Communications Act of 1934 by authorizing the ****573*246** Federal Communications Commission (FCC) to award licenses to use the electromagnetic spectrum through a competitive bidding process, and by requiring the Department of Commerce to identify spectrum used by the Federal Government to be reallocated to use by private industry and state and local governments. In addition, the Committee has incorporated the provisions of H.R. 707, the "Emerging Telecommunications Technologies Act of 1993," into its recommendation proposal. Finally, Subtitle C makes a series of technical corrections to various communications stations.

Chapter 1 of Subtitle C establishes procedures for licensing frequencies through a competitive bidding process. The Committee found that the current licensing procedures delay the delivery of services to the public and the result is stifling the growth of emerging technologies. The Committee also found that some users of the spectrum are reselling the public airwaves to subscribers for a fee, and therefore should pay reasonable compensation for use of this public resource.

The bill requires the Commission to establish a competitive bidding methodology promoting the development of new technologies, products and services, and which efficiently utilizes the spectrum for the benefit of the public. The Commission is required to adopt bidding methodologies that promote rapid deployment of advanced services to all the people of the United States, including those in rural areas; provide opportunities for small businesses, and prevent the selling of licenses for unjust enrichment.

In prescribing its rules, the Commission shall develop alternative methods of payment, such as lump sum payments, royalty payments and guaranteed annual minimum payments (or some combination) thereof to encourage participation by small and innovation companies. The rules shall include performance requirements including deadlines and penalties to ensure prompt delivery of services to rural areas as well as urban areas, and to prevent stockpiling or warehousing of spectrum by licensees. The Commission is also required to prescribe area designations and bandwidth assignments to promote equitable distribution of services among geographic areas and require full transfer disclosures. The authority of the Commission to use auctions expires on September 30, 1998.

Chapter 2, the "Emerging Telecommunications Technologies Act of 1993," reallocates radio frequency spectrum to promote the development of new technologies for commercial purposes. The bill requires the Secretary of Commerce (the Secretary) to identify and transfer for reallocation not less than 200 megahertz (mHz) of spectrum to the Federal Communications Commission. The Commission shall reassign such spectrum, currently assigned to Federal Government users, to private users and to public safety agencies to promote the development and use of emerging telecommunications technologies, to protect the public interest, and for other purposes.

The bill establishes procedures for the identification of the frequencies to be reallocated from the Federal Government to non-government uses. The legislation requires that 90% of the identified frequencies be below 5 gigahertz (gHz), and limits the percentage of identified spectrum that can be shared between Federal Government and non-Federal Government users. It sets up a timetable ****574*247** for reallocation that recommends effective dates by which the President may withdraw or limit frequency assignments. In addition, the chapter establishes statutory guidelines for the withdrawal of frequency assignments from Government stations, and grants the President the authority to recover reassigned frequencies in the case of a national emergency, or for other reasons. The bill also permits the Secretary to expedite the transfer of up to 30 mHz of spectrum to the Commission for reallocation to non-Federal users. Finally, this chapter requires the Assistant Secretary for Communications and Information and the Chairman of the Commission to conduct joint spectrum planning.

Chapter 3, Communications Technical Amendments, makes technical correction to the Communications Act and the Communications Satellite Act, transfers and redesignates sections from the Communications Act to the National Telecommunications and Information Administration Organization Act (NTIAO Act), and eliminates outdated provisions of the Communications Act.

BACKGROUND AND NEED FOR THE LEGISLATION

CHAPTER 1–COMPETITIVE BIDDING AUTHORITY

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President Clinton proposed in his budget submitted to Congress that the FCC be given authority to use competitive bidding as a source of revenues and as a means of improving the spectrum assignment process. In correspondence with the Committee, Acting Assistant Secretary of Commerce Thomas J. Sugrue, on behalf of Secretary of Commerce Ronald H. Brown, also endorsed spectrum auctions as a means of improving the FCC's licensing process and promoting efficient use of the spectrum. The Commerce Department underscored that auctions should be designed to encourage wide participation and to allow innovation to be rewarded.

In many ways, President Clinton's budget takes a position similar to the Bush and Reagan administrations. It has long been the view of NTIA and the FCC that the Commission's current process of spectrum assignment by lottery and comparative hearings is flawed. This view holds that not only do current licensing procedures often result in arbitrary and inefficient spectrum management decisions, but also, by assigning spectrum to non-federal licensees without receiving compensation, the government is failing to manage wisely one of the nation's most valuable national resources.

The radio frequency

The radio frequency spectrum is the medium that makes possible wireless communications such as land mobile radio, shortwave and commercial radio, television broadcast, microwave telephone relays, cellular telephones, navigational radio, and satellite transmission. Some frequencies are better suited than others for certain communication tasks. Radio waves, for example, behave differently at different frequencies, particularly in the way they are affected by terrain and atmosphere.

Radio frequency spectrum is a non-depletable natural resource and has finite boundaries. This precious but limited resource has become vitally important to our economic success and social well- ****575** being. ***248** Currently, commercial and public safety users are finding a substantial shortage of frequencies available for assignment. Existing congestion creates short-term problems for users, especially in some urban areas where spectrum is in high demand by private sector and non-federal users, such as public safety agencies. Given the current congested state of the spectrum, the ability to accommodate new spectrum-dependent technologies is severely limited. Today, advances in telecommunications technologies are spurring economic growth and improving our way of life. Many of these emerging technologies depend on the use of radio waves as the medium for transmitting information.

Current licensing procedures

Authority to use lotteries was contained in the Senate version of the Omnibus Budget Reconciliation Act of 1981. This provision was specifically intended to remedy a backlog of license applications for low-power television. There was no such lottery provision in the bill passed by the House, and no hearings were held on the issue in the House. Since that time lotteries have been used extensively by the Commission to award a variety of licenses. In implementing lotteries over the past twelve years, the FCC for the most part chose not to put in place serious screening requirements. As a result, lotteries have been characterized by "get rich quick" appeals by firms that would submit an application for a fee, so-called "licensing mills," and by licenses landing in the hands of those ill equipped to build or operate a service properly utilizing radio spectrum.

In addition, the lottery system is widely criticized for failing to meet the FCC's public interest standard and for encouraging unproductive speculation for spectrum licenses. In the case of spectrum lottery for cellular licenses, the rules adopted by the FCC for the lottery system failed to contain adequate financial and technical qualifying standards or anti-trafficking requirements, thereby enabling many lottery winners subsequently to sell their licenses, sometimes at substantial sums, to legitimate parties who actually built the cellular system. The FCC awarded Rural Service Area (RSA) cellular licenses through the use of lotteries to applicants who often times had no real intention of investing in the technology of using the frequencies themselves.

The Committee finds that in many respects the FCC's current licensing methods for assigning spectrum have not served the public interest. Comparative hearings frequently have been time consuming, causing technological progress and the delivery of services to suffer. Lotteries engendered rampant speculation; undermined the integrity of the FCC's licensing process and, more importantly, frequently resulted in unqualified persons winning an FCC license. Many lottery applicants had no intention to build or operate a system using the spectrum, but instead only sought to acquire a license at nominal cost and

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then sell it, making a large profit and at the same time delaying the delivery of services to the public.

Another criticism of lotteries is that they do not to reward persons who have spent money to research and develop a new technology or service. The Committee is aware of a number of instances where persons had ostensibly developed a new technology, only to ****576*249** see their chance to capitalize on the investment crushed by a flood of lottery applicants. A competitive bidding system, therefore, will encourage innovative ideas, and give the proper incentive to spur a new wave of products and services that will keep the United States in a competitive position.

Spectrum is a scarce resource, and thus every exclusive license granted denies someone else the use of that spectrum. This is what give spectrum a market value. Because new licenses would be paid for, a competitive bidding system will ensure that spectrum is used more productively and efficiently than if handed out for free. Competitive bidding concepts have long been applied to other important public resources such as grazing lands and oil and gas leases. The Committee believes it is now the time to extend those concept to the radio spectrum.

In addition to promoting efficient use of the spectrum the Committee also believes that rapid deployment of new technology should be encouraged. Use of competitive bidding will help accomplish that goal.

The Committee also finds that as these new services are being developed it is necessary to establish rules so that like services are regulated similarly. Moreover, uniform rules are needed to ensure that all carriers providing such services are treated as common carriers under the Communications Act of 1934.

CHAPTER 2–EMERGING TELECOMMUNICATIONS TECHNOLOGIES

Spectrum management

Two federal agencies, the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC), have authority over the radio spectrum in the United States. The NTIA, under the Department of Commerce, is responsible for allocating, assigning, and maintaining efficient use of the radio spectrum assigned to Federal Government users. The NTIA utilizes the Interdepartmental Radio Advisory Committee (IRAC) to establish priorities and encourage efficient spectrum use by Federal Government users. However, the Committee record, compiled over a five year period, includes evidence that the Federal Government does not always employ the most efficient use of its assigned frequencies, nor utilize the most spectrum-efficient technologies in every case. In the 102d Congress, the Committee heard testimony, including that of the current, and all former NTIA Administrators, which argues that the Federal Government could use spectrum more effectively.

The FCC is responsible for the radio spectrum used by private sector and non-Federal Government users. The Commission's spectrum management responsibilities include licensing the use of discrete frequencies for the operation of individual spectrum-dependent equipment, and enforcing its regulations governing the proper use of the spectrum. The Commission's adversarial rulemaking and licensing procedures have forced commercial and public safety users to utilize the most advanced spectrum technologies available, and promoted more efficient spectrum use in both the private sector and the public safety community.

****577*250** Spectrum utilization

Commission officials contend that virtually all of the spectrum (below 20 gHz) currently is being utilized. The frequencies above 20 gHz are utilized for fewer applications because of the limitations imposed by the current state of technology. The lack of unassigned, usable spectrum available for commercial and non-Federal Government users has forced the Commission to postpone or forgo spectrum assignments for many worthwhile uses and technologies, and is imposing unacceptable levels of congestion in many areas. In fact, the Committee record indicates that scarcity of spectrum has limited competition in many spectrum-dependent industries and has resulted in increased cost to American businesses and consumers.

An example of the dilemma that spectrum managers must face due to spectrum congestion was provided several years ago,

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when the Commission was forced to reallocate two mHz of spectrum that had been utilized, on a secondary basis, by the Amateur Radio Service. The Amateur Service has established an impressive record of providing life-saving emergency communications during natural disasters and accidents, when more conventional methods of communications were rendered inoperable. Yet because of the lack of alternative frequencies, the Commission was forced to take away these two mHz in return for giving the Service "primary" access to an adjacent three mHz band. Passage of this bill will alleviate the pressure to take more spectrum for the Amateur Service by providing frequencies for new technologies in other bands.

The Committee record also demonstrates that the lack of available spectrum is stifling the introduction of new technologies. The Committee anticipates that the passage of this legislation will reverse this situation, and allow the Commission to allocate additional frequencies to new and innovative technologies.

International considerations

In 1992, the Mobile World Administrative Radio Conference (WARC), an international conference of the International Telecommunications Union (UTC), made several pivotal determinations regarding the allocations of radio spectrum for new mobile radio technologies. The problem facing the FCC, in seeking to promote the interests of U.S. telecommunications manufacturers, service providers and end users, is that in many cases the Commission lacks the spectrum to conform with the allocation decisions made at the WARC.

Many of our international competitors have identified frequencies for the commercial development of new mobile radio applications. For example, the British (U.K.) government has allocated 200 mHz to microcell, a new technology for land mobile communications. Microcell combines landline telephone services with "cellularized" mobile services, providing users almost constant access to the telephone network.

There are currently several different programs in Europe related to mobile and personal communications. Each of these programs will require spectrum allocations before they can be made available to the public. Near-term programs include Pan European Digital Cellular, with an allocation of 50 mHz, and Europe-wide Cordless ****578*251** Telephone 2 (CT-2), with an allocation of 4 mHz in the United Kingdom. Germany and France are considering similar allocations for CT-2. The Conference of European PTT's (CEPT), through its frequency advisory committee, has recommended 20 mHz be made available in Europe for Digital European Cordless Telephones (DECT). Most of these reallocations will require PTT (telephone) fixed radio links and military systems to vacate some spectrum in order to have frequencies available for the new services.

Pacific Rim countries are also taking steps to ensure that adequate spectrum is available for emerging technologies. For example, the Japanese government has announced a 300 mHz allocation for advanced wireless communications.

Communications technical amendments

The Committee has corrected a number of clerical mistakes and outdated provisions in the Communications Act. In addition, with the enactment of the National Telecommunications and Information Administration Organization Act, some sections of the Communications Act pertaining to the NTIA need to be transferred.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held an oversight hearing on April 22, 1993 on spectrum auctions and what issues should be addressed as part of any legislation. Testimony was received from the following witnesses: Mr. Geoffrey S. Goodfellow, Chairman, RadioMail Corporation; Mr. Douglas G. Smith, President, Omnipoint Corporation; Mr. Jack Pellici, Vice President of Business Development, Oracle Corporation; Mr. Wayne Schelle, Chairman, American Personal Communications (representing PCS Action); Mr. Thomas Wheeler, President, Cellular Telecommunications Industry Association; Mr. William deKay, Chairman, Dialpage Communications (representing Telocator); and Mr. R. Craig Roos, President and CEO, Personal Communications Services of New York, A LOCATE Company.

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The Committee's Subcommittee on Telecommunications and Finance held a hearing on H.R. 707, which is identical to Chapter 2 of the "Licensing Improvement Act of 1993," on February 4, 1993. Testimony was received from the following witnesses: Mr. Eric J. Schimmel, Vice President, Telecommunications Industry Association; Mr. Thomas Wheeler, President, Cellular Telecommunications Industry Association; Mr. Edward Fritts, President, National Association of Broadcasters; Mr. Paul Kozlowski, Vice President, Digital Equipment Corporation; and Mr. Ronnie Rand, Executive Director, Associated Public Safety Communications Officers, Inc.

During the 102d Congress, the Subcommittee held hearings on spectrum auction proposals and spectrum allocation proposals. The hearing held on February 21, 1991, included Chairman Alfred Sikes from the FCC, and the hearing held on March 12, 1991, included Assistant Secretary Janice Obuchowski of the NTIA. An additional hearing was held on October 9, 1991 featuring witnesses from the public safety community, cellular industry, paging industry and others.

****579*252** COMMITTEE CONSIDERATION

LICENSING IMPROVEMENT ACT OF 1993

On May 6, 1993, the Subcommittee on Telecommunications and Finance met in open session and ordered reported Subtitle C, the "Licensing Improvement Act of 1993" (Committee Print), by a voice vote, a quorum being present. On May 11, 1993, the full Committee on Energy and Commerce met in open session and ordered reported Subtitle C, the "Licensing Improvement Act of 1993" (Committee Print), as amended, by voice vote, a quorum being present.

EMERGING TELECOMMUNICATIONS TECHNOLOGIES ACT OF 1993

On February 4, 1993, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill (H.R. 707) (now Chapter 2 of the "Licensing Improvement Act of 1993") by voice vote, a quorum being present. On February 23, 1993, the full Committee on Energy and Commerce met in open session and ordered reported the bill (H.R. 707) by voice vote, a quorum being present.

On March 2, 1993, the full House of Representatives passed H.R. 707 under suspension of the rules, by a recorded vote of 410–5.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that, because of the competitive bidding authority contained in Chapter 1, which will raise $7.2 billion over five years, there will be no net cost to the Federal Government.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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The comprehensive letter of the Congressional Budget Office is found at the conclusion of the report on this Title of the bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The enactment of subtitle C will have no inflationary impact.

****580*253** SECTION-BY-SECTION ANALYSIS

CHAPTER 1–COMPETITIVE BIDDING AUTHORITY

Section 5201

Short title–"Licensing Improvement Act of 1993".

Section 5202

Findings. The Committee finds that current licensing procedures often delay delivery of services to the public and can result in unjust enrichment of applicants; that if licensees are engaged in reselling the use of the public airwaves to subscribers for a fee, the licensee should pay reasonable compensation to the public for those resources; that a carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves; and that therefore, the Federal Communications Commission should have the authority to issue licenses utilizing a system of competitive bids.

Section 5203

Authority to use competitive bidding. This section amends section 309 by adding a new subsection (j), which grants the FCC authority to use a system of competitive bidding as a means of granting licenses. This authority is in addition to the FCC's existing authority to use comparative hearings and lotteries; however, the Commission's authority to use lotteries is circumscribed by section 5206(c). The authority would apply only when there are mutually exclusive applications for an initial license for a use described in subsection 309(j)(2). Competitive bidding would not be permitted to be used for unlicensed uses; in situations where there is only one application for a license, or in the case of for a renewal or modification of the license.

Section 309(j)(2) defines the uses to which bidding may apply. This paragraph provides that where the Commission determines that the principal use of the spectrum will be to, in essence, resell the spectrum to subscribers, and the Commission determines that an auction will meet the objectives in section 309(j)(3) discussed below, then that class of licenses should be subject to competitive bidding. The Committee's extensive record reveals that there are limited cases in which competitive bidding would be appropriate and in the public interest. The limited grant of authority contained in this section is designed so that only those classes of licenses would be issued utilizing a system of competitive bidding. The enactment of section 309(j) should not affect the manner in which the Commission issues licenses for virtually all private services, including frequencies utilized by Public Safety Services, the Broadcast Auxiliary Service, and for subcarriers and other services where the signal is indivisible from the main channel signal. Similarly, inasmuch as mass media broadcast signals are provided to the general public without the payment of a subscription fee, the current licensing practices of the FCC remain unchanged. The fact that some ****581*254** television licensees may receive compensation from cable television operators as a result of the enactment of the "retransmission consent" provisions of the Cable Act should have no effect on the Commission's licensing of television stations.

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It is the Committee's intention that the enactment of this section will not affect the Commission's current procedures for granting licenses for private use.

The Committee remains committed to protect public safety users from adverse effects of competitive bidding, and encourages the Commission to take into account the needs of public safety users in making allocation decisions.

The Committee intends that the determination required by section 309(j)(2) will be made when a service or class of service is defined by the Commission. The Commission is also expected to review existing services to determine whether they meet the test set forth in section 309(j)(2).

Section 309(j)(3) requires the Commission to establish a methodology for each kind of service subject to competitive bidding, and to test alternative methodologies. The Committee expects the Commission to match auction methodologies with the characteristics of the service. Nothing in this section should preclude the Commission from using the same methodology for more than one service.

This paragraph also sets out the objectives the FCC must follow in creating an auction system.

In its regulations implementing this section, the Commission must seek to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.

In addition, the Commission's regulations must promote economic opportunity and competition, and ensure that new and innovative technologies are readily accessible to the American people. The Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.

The Committee does not intend that the Commission should apply any particular antitrust or other test in order to avoid concentration of licenses, but rather should apply a common sense approach. If a single licensee dominates any particular service, or if it dominates a significant group of services, then the Commission should take that into account. The Committee does not intend that this objective dominate the Commission's decision-making when it adopts regulations to implement the competitive bidding process.

The Committee is concerned that, unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries. The Committee recognizes that the characteristics of some services are inherently national in scope, and are therefore ill-suited for small business. However, other services are local, and could well provide new opportunities for small business participation. In those cases, the Committee anticipates that the Commission will adopt regulations that will ensure that small businesses will continue to have opportunities ****582*255** to become Commission licensees, and ensure that the adoption of the competitive bidding provisions of this section will not have the effect of excluding small businesses from the Commission's licensing procedures.

The Committee adopted an amendment to ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women. The Committee recognizes that, unlike mass media licenses, where diversity in ownership contributes to diversity of viewpoints, most of the licenses issued pursuant to the competitive bidding authority contained in section 309(j) will be for services where the race or gender of the licensee will not affect the delivery of service to the public. Nevertheless, the Commission should adopt regulations pursuant to this section to ensure that businesses owned by members of minority groups and women are not in any way excluded from the competitive bidding process.

Section 309(j)(4) requires the Commission to establish rules to implement the objectives set forth above. In prescribing these rules, the Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sum payments, installment or royalty payments, guaranteed annual minimum payments, or some combination so as to promote economic opportunity as defined in paragraph 3(b).

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One of the primary criticisms of utilizing competitive bidding to issue licenses is that the process could inadvertently have the effect of favoring only those with "deep pockets", and therefore have the wherewithal to participate in the bidding process. This would have the effect of favoring incumbents, with established revenue streams, over new companies or start-ups. The Committee has given the Commission the flexibility to design alternative payment schedules in order that this not occur.

While it is clear that, in many instances, the objectives of section 309(j) will best be served by a traditional, "cash-on-the-barrelhead" auction, it is important that the Commission employ different methodologies as appropriate. Under this subsection, the Commission has the flexibility to utilize any combination of techniques that would serve the public interest.

The Committee anticipates that in some instances the Commission will act in a manner that is comparable to a mortgage banker, who designs new mortgage instruments in order to increase the universe of people who can afford to buy homes. The Commission's adoption of any competitive bidding methodology will have the effect of determining whether there will be widespread participation in the licensing process, or whether participation will be restricted to a few, well-heeled firms. A new and innovative proposal that may have a high risk factor, for example, may lead the Commission to structure a bidding system that requires only minimal payments during the construction phase, followed by higher payments as a revenue stream develops, and perhaps with a balloon payment at the end of the license term. It is the Committee's intention that the Commission's methodology for any given service or class of license be based on the characteristics of the service itself, in order to promote the objectives and requirements of section 309(j).

****583*256** Paragraph (4) also requires the Commission to include performance requirements and deadlines to ensure prompt delivery of service to rural areas. In the past, the Commission has used deadlines and penalty provisions, including license forfeiture, as a means of ensuring that licensees build their systems. The legislation requires the Commission to take similar steps to ensure prompt delivery of service to rural areas.

This paragraph also requires the Commission to adopt rules to prevent stockpiling or warehousing of spectrum by licensees or permittees.

The Committee's record demonstrates that there is a potential for applicants to acquire licenses pursuant to a competitive bidding process for a purpose other than delivering a service to the public. For example, an incumbent service provider could submit a bid for a license in a service that would compete with an existing business, and engage in behavior that would prevent competition from occurring. This would deny the public both the benefit of having access to the new service, and the benefits of competition.

In order to assure that the goal of prompt delivery of services to the public is not frustrated by the Commission's employment of competitive bidding, the Commission's regulations must include performance requirements, and penalties for failure to meet those requirements, to prevent warehousing of frequencies.

Paragraph (C) requires that, consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographical areas, economic opportunity for a wide variety of applicants, and investment in and rapid deployment of new technologies and services.

The Committee is aware that the Commission is currently considering a variety of proposals to create a new Personal Communications Service, and that there is considerable controversy about license eligibility criteria and the size and scope of licenses in the new service. The Committee takes no position on any of these issues. The Committee notes that new section 309(j) is a generic statute that will govern the issuance of licenses in many different services. Paragraph (C) retains for the Commission the flexibility to prescribe eligibility criteria, and area designations and bandwidth assignments based, among other things, on the characteristics of the proposed service. Given the generic nature of the statutory language, and the express neutrality of the Committee on these issues, the Committee is confident that the Commission will adopt rules for the new PCS service without construing this section in a manner that would dictate any particular outcome.

The Committee is aware of the creative talents of the communications bar, and is confident that this language will be invoked

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to support the claims of all the parties involved in this proceeding. The Committee has attempted to preserve the Commission's discretion to license the new Personal Communications Service without skewing the outcome of this debate.

The Committee's neutrality on the sundry controversies within the rulemakings establishing the PCS Service extends to each such controversy. The Committee has not included provisions in section ****584*257** 309(j) to direct the Commission to include, or exclude, any company (or group of companies) from eligibility; to determine that the "excessive concentration" provisions be read in any particular way, or to imply a preference for any proposed licensing scheme over any other. Again, and at the risk of overkill, the provisions of the new section are generic in nature, and are not intended to indicate the Committee's preference for any particular position in this particular dispute.

This neutrality extends to the Commission's "Pioneer Preference" policies as well. The Commission has adopted and implemented this policy sua sponte. This policy specifically has never been encouraged, nor discouraged, by an action taken by this Committee. To the extent that this policy is consistent with the provisions of this section; other provisions of the Communications Act, and other applicable law, the Commission is free to continue to implement such a policy. The Commission should not, however, view the Committee's neutrality as any type of blessing or approval of its policies. The provisions of section 309(j) are, again, expressly neutral with respect to these policies.

During the Committee's consideration of "The Licensing Improvement Act of 1993", the Committee rejected, by a vote of 36–8, an amendment that would have mandated that the Commission license certain rural telephone companies for certain services. The Committee has never dictated–by statute–that the Commission issue specific licenses to specific individuals or companies since it first approved legislation creating the FCC fifty-nine years ago. While the Committee has gone to great lengths to protect the interests of rural residents, it has refused to single out any service provider for special treatment.

Finally, the Commission is required to establish rules requiring transfer disclosures and antitrafficking restrictions. The Committee notes that, at least hypothetically, a system of competitive bidding will obviate the need for antitrafficking restrictions. In a system of open competitive bidding, trafficking in licenses should be minimal, since the winning bidder would have paid a market price for the license. Nevertheless, the Committee anticipates that the Commission will monitor trafficking in licenses issued pursuant to the provisions of section 309(j), and will impose any necessary regulations and transfer fees as may be necessary to prevent unjust enrichment.

In the event that the Commission limits participation in any given competitive bidding procedure, however, there exists a significant possibility that licenses will be issued for bids that fall short of the true market value of the license. To the extent that the Commission is attempting to achieve a justifiable social policy goal–such as the reservation of appropriate licenses for small business applicants–licensees should not be permitted to frustrate that goal by selling their license in the aftermarket. In these instances, antitrafficking restrictions are necessary and appropriate.

This paragraph expressly authorizes the Commission to impose or assess payments in order to prevent unjust enrichment resulting from trafficking in licenses. The Committee anticipates that the Commission will use this authority to deter speculation and participation ****585*258** in the licensing process by those who have no intention of offering service to the public.

Section 309(j)(5) authorizes the Commission to adopt rules to ensure that the bidder's application meets minimum requirements of acceptability. Such rules may, for example, include requirements that bidder's applications contain all information and documentation sufficient to document that the application is not in violation of Commission rules. Any applications not meeting those requirements may be dismissed prior to the competitive bidding.

Paragraph (5) requires that prior to the issuance of any license, the Commission must determine that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. The Committee notes that the provisions of this paragraph give the Commission the discretion to make this determination only with respect to the applicant who submits the winning bid, and does not require the Commission to make this determination for all applicants prior to the competitive bidding procedure.

In addition, subsection 309(j)(5) requires the Commission to prescribe expedited procedures to resolve substantial and material facts that are disputed.

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Section 309(j)(6) establishes rules of construction. In particular, this paragraph provides that nothing here affects renewal expectancy, which some have argued would be increased if a licensee has paid money for the license. The Committee seeks to ensure that the legislation alters only the licensing process, and has no effect on the requirements, obligations or privileges of the license holders.

This paragraph also provides that nothing shall be construed to prohibit the FCC from issuing nationwide licenses. As provided in section 309(j)(4)(C), the Commission has the authority to prescribe service territories based on the characteristics of the proposed service.

Section 309(j)(7) provides that the FCC cannot base an allocation decision, or the rules it prescribes pursuant to paragraph (4)(A) and (C), solely or predominantly on the expectation of more revenues. The Committee intends the FCC to make its decisions based on sound communications policy pursuant to the Communications Act. The Commission is not a collection agency of the U.S. Government, and should not to be influenced by budgetary considerations. This paragraph is designed to insulate the FCC's communications policy decisions from budgetary pressures, and clarifies that important communications policy objectives should not be sacrificed in the interest of maximizing revenues from auctions.

In connection with application and licensing proceedings, the Commission should, in the public interest, continue to use engineering solutions, negotiation, threshold qualifications, service rules, and other means in order to avoid mutual exclusivity. The licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the Committee encourages the Commission to avoid mutually exclusive situations, as it is in the public interest to do so. The ongoing MSS (or "Big LEO") proceeding is a case in point. The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific ****586*259** threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate.

Section 309(j)(8) provides that all revenues from the auction will be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code. This paragraph also clarifies that any license issued by the Commission pursuant to section 309 does not vest any property rights in the license holder and that state and local government entities shall not treat the license as the property of the licensee for tax purposes. This subsection is intended to clarify that all licenses or permits issued by the Commission are franchises that constitute Federal property and not property of the licensee. Therefore, no State or local government entity may tax or assess, directly or indirectly, the value of such license or permit held by the licensee.

Section 309(j)(9) requires the FCC to report back to Congress no later than September 30, 1997 on the auction system. In the report the Commission shall stipulate the revenues that have been raised using competitive bidding, how the competitive bidding system has met the objectives of the Act, how the designed methodology secured prompt delivery of services to rural areas, and how much more revenue is anticipated. This paragraph also stipulates that the competitive bidding authority terminates on September 30, 1998.

Section 5204

Conforming amendments. This section makes conforming amendments to subsection 309(i), which contains the authority for lotteries. This section substantially limits the ability of the FCC to use lotteries. With the enactment of this section, the FCC would only be able to use lotteries when it found that auctions were not applicable under section 309(j)(2)(A).

This section also makes technical changes to subsection (i), and requires the FCC to issue rules requiring disclosure of financial information at the time of sale of a license, and limiting the ability of lottery winners to sell their license, so as to prevent the churning and profiteering that has characterized lotteries.

Section 5205

Regulatory parity. This section amends section 332(c) to provide that services that provide equivalent mobile services are regulated in the same manner. It directs the Commission to review its rules and regulations to achieve regulatory parity among services that are substantially similar. In addition, the legislation establishes uniform rules to govern the offering of all commercial mobile services. Uniform rules are needed to ensure that all carriers providing such services are treated as

common carriers under the Communications Act of 1934.

Under current law,[1] private carriers are permitted to offer what are essentially common carrier services, interconnected with the public switched telephone network, while retaining private carrier ****587*260** status. Functionally, these "private" carriers have become indistinguishable from common carriers[2] but private land mobile carriers and common carriers are subject to inconsistent regulatory schemes. The rates charged by common carrier licensees are subject to the requirements of title II of the Communications Act, which requires inter alia, that rates must be just and reasonable and not unreasonable discriminatory. Common carriers are also subject to state regulation of rates and services. Private carriers, by contrast, are statutorily exempt from title II of the Communications Act and from rate and entry regulation by the States.

The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services and deny consumers the protections they need if new services such as PCS were classified as private. Thus, Section 5205 of the bill amends Section 332(c) of the Communications Act to require that all providers of "commercial mobile services" shall, insofar as they so engaged, be treated as common carriers for purposes of the Communications Act, except for such provision of Title II of the Act as the Commission specifies by rule shall not apply. To foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure, new section 332(c)(3)(A) also would preempt state rate and entry regulation of all commercial mobile services. States may petition the FCC for authority to regulate the rates for commercial mobile services under specified circumstances.

Section 332(c)(1) state that any person providing commercial mobile service, which is defined below, shall be treated as a common carrier subject to the requirements of title II. The Commission is given authority to specify by rule which provisions of title II may not apply. In specifying sections or provisions of sections that shall not apply, the Commission may not specify sections 201, 202, or 208. In addition, the Commission may not specify a provision that is necessary to ensure charges are just and reasonable and nondiscriminatory, or otherwise in the public interest.

The Commission may specify, for instance, the commercial mobile services need not be tariffed at all, or it may choose to subject such services to a policy of "permissive detariffing." The Committee is aware that the Commission's long-standing policy of permissive detariffing, applied to non-dominant carriers, was recently found to be outside the scope of the Commission's authority under Section 203 of the Communications Act. Amer. Tel. & Tel. v. FCC, 978 F.2d 727 (D.C. Cir. 1992). By permitting the Commission to "specify" which provisions of Title II of the Communications Act are not applicable to persons engaged in the provision of commercial mobile services, section 332(c)(1)(A) is intended to give the Commission the authority to reinstate this policy with respect to such persons ****588*261** insofar as they are so engaged if it finds that such policy is not needed to ensure charges are just and reasonable or otherwise in the public interest.

Section 332(c)(1)(B) provides that the Commission shall order a common carrier to establish interconnection with any person providing commercial mobile service, upon reasonable request. Nothing here shall be construed to expand or limit the Commission's authority under section 201, except as this paragraph provides. The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.

Section 332(c)(2) largely restates existing subsection 332(c)(2), but clarifies that parties deemed common carriers by virtue of paragraph (a)(A) of this legislation can continue to offer radio dispatch service. The intent of the Committee is not to disturb the ability of private carriers offering dispatch service prior to enactment from continuing to offer such service. In addition, this section authorizes the FCC to decide as part of its rulemaking pursuant to section 332(c) whether all common carriers should be able to provide dispatch service.

Section 332(c)(3) provides that state or local governments cannot impose rate or entry regulation on private land mobile service or commercial mobile services; this paragraph further stipulates that nothing here shall preclude a state from regulating the other terms and conditions of commercial mobile services. It is the intent of the Committee that the states still would be able to regulate the terms and conditions of these services. By "terms and conditions," the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (e.g., zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis or such other matters as fall within a state's lawful

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authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

Section 332(c)(3)(b) permits states to petition the Commission for authority to regulate rates for any commercial mobile services where mobile services have become a substitute for telephone service, or where market conditions are such that consumers are not protected from unreasonable and unjust rates. In assessing, under clause (ii), whether market conditions are such that consumers are not protected from unreasonable and unjust rates. In assessing, under clause (ii), whether market conditions in a state fail to protect subscribers of commercial mobile services adequately, the FCC shall take into account such factors as the number of such subscribers in proportion to the total population of a service area; and the number of market entrants providing such services. In reviewing petitions under clause (ii), the Commission also should be mindful of the Committee's desire to give the policies embodies in Section 332(c) an adequate opportunity to yield the benefits of increased competition and subscriber choice anticipated by the Committee. ****589*262** The FCC is required to respond to any states petition within 9 months of filing.

Section 332(c)(4) provides that nothing here affects the regulation of Comsat pursuant to title IV of the Communications Satellite Act of 1962.

Section 332(c)(5) defines the terms used in this subsection. "Commercial mobile service" is defined as a mobile service, as defined in section 3(n), that is interconnected with the public switched telephone network offered for profit and held out to the public, or offered on an indiscriminate basis to classes of eligible users, or to such a broad class so as to equal the public. "Private land mobile service" is defined as anything that does not fall under commercial mobile service. The legislation also directs the Commission to define "interconnected" and "public switched telephone network". In defining "interconnected" the Commission should consider how that term is used and qualified in current section 332(c)(1). The effect of this definition is to maintain a large number of SMRs which provide service to a narrow group of customers under the Private Land Mobile category.

Section 5205(b) makes conforming changes to the definition of "mobile service" in section 3(n) by incorporating the definition of "private land mobile service," found in section 3 (gg), and adding to it a definition of licensed personal communications services that the Commission would establish as part of its proceedings.

This section requires the FCC to review its rules affecting private land mobile services and within 1 year issue such changes as may be necessary to achieve regulatory parity for those persons providing equivalent services. It is the intent of the Committee that the Commission make a complete assessment of its rules affecting private land mobile, including loading requirements, spacing limitations, and others to determine whether such rules still serve the public interest in light of the changes made by this legislation. Current commission policy prohibits common carriers from being licensed to offer Specialized Mobile Radio service. The Committee encourages the Commission to re-examine this restriction in light of the enactment of this section to determine the extent to which such a restriction is in the public interest.

This paragraph also provides that the Commission has authority to build in effective dates for its rules that allow for an orderly transition. However, nothing in the Commission's rules could have the effect of accelerating the three-year period for compliance stipulated in section 5205(c)(2). Paragraph (1) provides that the effective date for the changes made on common carriers shall take effect within 1 year. It further provides, however, that those persons who are now regulated as private land mobile service providers and whose status would change to common carrier by virtue of this Act have 3 years to comply.

Section 5206

Effective dates and deadlines. This section directs the FCC to issue rules on a system of competitive bidding within 20 days. It also directs the FCC to issue its report and order on PCS within 180 days, and to commence issuing licenses for PCS within 270 days. Finally, subsection (c) provides that the FCC shall not use ****590*263** lotteries any time after enactment if auctions can be used under the test described in section 309(j)(2).

Interruptions in the on-going filing, processing and approval of applications for licenses for existing services, which have not been characterized by rampant speculation, would be disruptive to business operations of existing wireless businesses and damaging to the economy.

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On the other hand, it is clear that several new services–such as interactive video, the proposed new services in the 220–222 mHz band, and (perhaps) the narrowband paging services proposed in the 900 mHz band–have, or are likely to, appeal to speculators who see an opportunity to "game" the Commission's lottery proceedings. To the extent that the Commission is able to utilize the competitive bidding procedures authorized in section 309(j) to issue licenses in these services, it will gain valuable information on how best to structure competitive bidding procedures, and deter speculators as well.

CHAPTER 2–EMERGING TELECOMMUNICATIONS TECHNOLOGIES

Section 5221

Short title. This section designates that the bill may be cited as the "Emerging Telecommunications Technologies Act of 1993."

Section 5222

Amendments to the National Telecommunications and Information Administration Organization Act. This section amends the National Telecommunications and information Administration Organization Act by adding a new "Part B–Emerging Telecommunications Technologies," with a number of new sections.

New section 111 sets forth the findings for this part. The Committee finds that major advances in technology during the past fifty years have increased significantly the demand for radio spectrum. This increased demand for spectrum, especially among non-Federal Government users, has surpassed the availability of this finite resource.

The Committee further finds that, at present, approximately 40 percent of the electromagnetic spectrum is reserved for Federal Government use. Although a portion of this spectrum is shared with non-Federal Government users, the Federal Government maintains primary access to these frequencies.

When many of the frequencies were initially assigned, spectrum was plentiful and, therefore, efficient use of the spectrum was a secondary consideration to the prevention of interference. Recently, the increasing demand for spectrum among the private sector and non-Federal Government users has resulted in Commission proceedings requiring users to employ more spectrum-efficient technologies. However, Federal Government users are not subjected to the discipline imposed by the Commission's proceedings. As a result, Government users have not implemented spectrum-efficient technologies as extensively as have Commission licensees. The Committee finds that many of the frequencies reserved for government licenses are under-utilized or inefficiently used. Some of the reserved frequencies are unused by Government licensees. The ****591*264** Committee finds that the public interest requires many of the reserved frequencies to be utilized more efficiently by Government or commercial operators.

Furthermore, the Committee finds that some frequencies are assigned for services that could be obtained more efficiently from commercial carriers or other vendors. For example, some radio communications could be carried over coaxial cable or fiber optic lines. This would free up frequencies for uses that could not substitute wire-based transmission media. The Committee record indicates that the Government is using spectrum-dependent technologies to provide services that could be obtained more efficiently from commercial carriers using commercially available technologies.

The Committee recognizes that the scarcity of assignable frequencies for commercial use will impede the development and commercialization of new telecommunications products and services as well as reduce the capacity and the efficiency of the United States' telecommunications systems. These deficiencies will adversely affect the productive capacity and international competitiveness of the United States economy. In addition, the Committee recognizes that these deficiencies may prevent some State and local police, fire, and emergency services from obtaining radio channels urgently needed to protect the public.

The Committee also finds that the availability of additional spectrum for commercial purposes will promote the emergency of new industries, create products and services for the American consumer, provide additional jobs in the U.S., and improve our

nation's international competitiveness. The multi-billion-dollar cellular industry, for example, was made possible by an action in 1968, when the government relinquished approximately 50 mHz of spectrum for commercial use.

The Committee record indicates that the nations and businesses which commercialize a new technology frequently gain significant competitive advantages in international markets. These early entrants often establish de facto technical standards in the market and attain lower production costs through economies of scale. This legislation is designed to ensure that the United States' commercial interests have spectrum resources available to compete successfully in these increasingly important emerging markets.

Finally, the Committee finds that the President, the Secretary and the Commission should be directed to take appropriate steps to correct these deficiencies in order to ensure that America has the spectrum it needs to compete in a broad range of emerging technologies.

New Section 112. National spectrum planning.

The Committee recognizes that difficulties often result from the absence of a formal long-range planning process to anticipate future spectrum demands and reserve spectrum to meet such demands. Neither the National Telecommunications and Information Administration (NTIA) nor the Commission has a comprehensive planning document that is updated on a regular basis.

Since the spectrum is a limited resource, the effective planning for its future use is needed to maximize the spectrum's potential ****592*265** usage and guard against harmful interference. Therefore, under subsection (a), the Assistant Secretary of Commerce for Communications and Information and the Chairman of the Commission are required to conduct periodic joint spectrum planning. Such spectrum planning is to occur at least biannually, and must include consideration of future spectrum requirements for public and private uses, and the spectrum allocations necessary to meet those requirements.

Subsection (b) requires the Assistant Secretary and the Chairman of the Commission to submit to Congress an annual report on the joint spectrum planning activities. In conducting their joint spectrum planning, the Committee expects that, when appropriate, NTIA and the Commission will solicit comments from the public during the planning process. Soliciting public comments may be in the form of public meetings, Notice of Inquiries or other appropriate procedures.

Subsection (c) requires that the first annual report submitted after the advisory committee's initial recommendations (as required in section 113(d)(4)) to include an analysis and response to these recommendations of the advisory committee. In addition, the first annual report will include an analysis of the spectrum efficiency of maintaining separate allocations for Federal Government and non-Federal Government licensees for the same or similar services.

The Committee notes that currently, NTIA and the FCC each administer adjacent blocks of frequencies for the same or similar purposes. For example, NTIA has licensed Government fixed microwave users to utilize frequencies between 1710 mHz and 1850 mHz. The FCC licenses non-Federal fixed microwave users on frequencies between 1850 mHz and 1990 mHz. Maintaining separate blocks of frequencies for fixed microwave services constitutes an inefficient approach to spectrum management. That inefficiency is particularly egregious in this instance, inasmuch as it is relatively easy to engineer fixed microwave networks–of both Federal and non-Federal users–so as to avoid harmful interference.

The Committee anticipates that the review required by this section will result in the identification of other inefficient uses of the spectrum, and that all such inefficiencies will be remedied expeditiously utilizing the existing authorities of the FCC and NTIA.

New Section 113. Identification of Reallocable Frequencies. Subsection (a) requires the Secretary to submit a report within 24 months to the President and Congress, identifying and recommending for reallocation frequencies that are assigned to Federal Government stations and are not required for the present or identifiable future needs of the Federal Government. The frequencies are to be those which are, or will be, feasible to make available during the next 15 years and have the greatest potential for commercial use under the Act. In identifying bands of frequencies for reallocation, the Secretary is to consider the relative costs to the Federal Government, in relation to the benefits to commercial users, of transferring the spectrum. The Secretary is also required to identify bands of frequencies which are most likely to have the greatest potential use and provide

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the greatest public benefit under the Act. This requirement is based on evidence in the Committee record that certain frequencies are better suited for a broad range ****593*266** of radio-based technologies. Due to technical constraints and propagation characteristics, other bands of frequencies are less well suited to many spectrum dependent applications.

It is the Committee's intent that achieving more efficient use of spectrum by Government licensees not be accomplished at the expense of safety. For example, commercial aviation uses radio technologies for a variety of safety-related communications, navigation and surveillance purposes. The Federal Air Regulations require domestic and flag air carriers to maintain a constant, two-way air-ground radio communication system; as a result, the commercial airline industry is making significant investments in such systems to ensure safe air travel.

The Committee believes that the implementation of this legislation will not result in the degradation of this or other safety-related service. In implementing this Act, the FCC and NTIA should take special care not to derogate treaty obligations of the United States that would affect safety, including civil aviation and aeronautical safety services.

Subsection (b) establishes a minimum requirement for the amount of spectrum to be identified and recommended for reallocation. Within two years after enactment of this legislation, the Secretary of Commerce is required to identify and recommend the frequencies for reallocation. The frequencies identified must span at least 200 mHz of the total spectrum and must be located below 5 gHz; except that a maximum of 20 megahertz of the identified frequencies may be located between 5 and 6 gigahertz.

The Government may retain some frequencies for its own use, but share those frequencies with FCC licensees. However, these shared frequencies may not count toward more than one-half, or 100 mHz, of the total 200 megahertz required to be identified. The legislation requires that assignments of a band of frequencies for shared use by FCC licensees and Federal Government stations limit Federal Government use by geographic area, by time, or by other means. The purpose of this provision is to ensure that frequencies that are to be shared be made available in areas where there is substantial congestion, or where there is a concentration of population of potential users. While H.R. 707 does not contain a specific percentage of the population that must have access to the shared frequencies, the Committee recommends that the Secretary make every effort to ensure that such frequencies be made available to FCC licensees in at least 80% of the area of the United States, and include as many metropolitan areas as possible. This provision will ensure that use by Federal Government users is substantially less than the potential use to be made by the FCC licensees. In addition, the legislation requires the Federal Communications Commission to establish coordination procedures for operational sharing permitted under this section.

Subsection (c) requires the Secretary, in identifying the spectrum for reallocation, to consider if the Government frequency is being used to provide a communications service that is also available from a commercial vendor. This is done to increase spectrum efficiency by relying upon commercially available substitutes, and the use of non-radiating technologies such as coaxial cable or fiber optic technologies, wherever feasible.

****594*267** When selecting frequencies for reallocation, the Secretary also shall consider the availability of equipment available to utilize that part of the spectrum, and the proximity of nearby frequencies that are being used for commercial purposes. The Secretary must also consider the allocation decisions of foreign governments, in order to make sure that domestic communications equipment manufacturers are not placed at a competitive disadvantage. It is the Committee's intent that this requirement will strengthen the competitiveness of U.S. companies in the United States and abroad.

Subsection 113(c)(4) provides additional criteria which the Secretary of Commerce must consider in identifying the 200 mHz of Government spectrum. Specifically, the frequencies that Federal power agencies are licensed to use may only be eligible for mixed use in geographically separate areas and shall not be subject to withdrawal as part of the minimum 200 mHz that is required by section 113(b) of this Act. In addition, the Secretary of Commerce should seek to avoid serious degradation of Government services and operations and to avoid excessive costs to civilian users of Government services.

While fulfilling the obligations of this section, the Secretary must assume that there will be reasonable rates of scientific progress and growth in demand for telecommunications services, and that the frequencies identified for reassignment will be assigned by the Federal Communications Commission within a fifteen-year period. These assumptions will help to assure that the frequencies that are reallocated will be able to be utilized as the state of the radio art advances, as well as help stimulate the development of new spectrum dependent technologies.

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Subsection (d) describes the procedures for the identification of frequencies. The Secretary is required to prepare and submit to Congress, within 12 months, a report which makes preliminary identification of frequencies to be reallocated. The Secretary is to convene an Advisory Committee to review the frequencies identified in the preliminary report. The purpose of the Advisory Committee is to advise the Secretary with respect to the frequencies which should be included in the final report and to prepare a report containing recommendations for reforming the process of allocating frequencies between Federal and non-Federal users. The Committee is required to meet at least monthly until each of the actions required by proposed section 114(a) has taken place.

The Advisory Committee is to be composed of the Chairman of the Commission and the Assistant Secretary, and one other representative of the Federal Government as designated by the Secretary. In addition, the Advisory Committee is to include representatives of the U.S. manufacturers of spectrum-dependent telecommunications equipment, commercial carriers, and other users of the electromagnetic spectrum including radio and television licensees, State and local public safety agencies, the aviation industry and other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum. It is the Committee's intention that representatives of radio and television licensees, State and local public safety agencies and the aviation industry be included on the Advisory Committee. In addition, this bill also requires that other interested members of the public who are ****595*268** knowledgeable about the uses of the electromagnetic spectrum be named.

While the enactment of this bill will provide a dramatic infusion of spectrum for commercial assignment, the Committee is concerned that the 70-year-old procedures for allocating spectrum between Government and nongovernment users are insufficient to permit effective spectrum management techniques. The Committee intends that the Advisory Committee's Report identify inefficiencies in the current system, and recommendations for improvements, to the maximum extent possible. The Committee is also concerned that the current process for meeting the spectrum needs of Government users may be too accommodating. The Government's own spectrum decisions–made behind closed doors, without public scrutiny–lack the discipline imposed on commercial users by the adversarial process used by the FCC. It is the Committee's intention that the Advisory Committee Report include recommendations that will increase the spectrum efficiency of Government users by subjecting their requests for spectrum to more vigorous examination.

Finally, the Committee intends that the Advisory Committee make recommendations on how allocations and assignments for Government users can be reviewed periodically to ensure that technological development or changes in Government needs can reduce the demand for spectrum by Government users.

Subsection (e) requires the Secretary to include a timetable for reallocation that recommends immediate and delayed effective dates by which the President shall withdraw or limit assignments on the frequencies specified in the report. These delayed effective dates shall permit the earliest possible reallocation of the frequency bands, while taking into account the relationship between the cost to the Federal Government of changing to different frequencies and the commercial benefits of reassignment of these frequencies. The effective dates shall be based on the useful remaining life of existing equipment and the need to coordinate frequency use with other nations.

In order to expedite the availability of at least a portion of the spectrum to be reassigned, this chapter authorizes the Secretary to identify an initial 30 megahertz of spectrum to be made available for reallocation immediately upon issuance of the report. The Committee strongly encourages the Secretary to identify as soon as possible an initial 30 mHz that can be made available to the FCC on an expedited basis.

New Section 114. Withdrawal of Assignment to Government Stations. Subsection (a) requires the President to withdraw the assignment to a Government station of any frequency recommended in the Secretary's report for immediate reallocation within six months after receiving such report. Pursuant to the provisions of this section, the President also is required to limit the assignment to a Government station of any frequency the report recommends for immediate mixed use. The President shall withdraw or limit the assignment to a Government station of any frequency which is recommended for reallocation or mixed use by the delayed effective dates described in the Secretary's report. This timetable will allow optimal use of frequencies that have been selected for reallocation and should impose only a minimal financial burden on the Government. ****596*269** In addition, the President shall provide the Government with frequencies for those displaced by shared arrangements or reassignment, if necessary, and notify each House of Congress and the Commission of the actions taken

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pursuant to this Act.

In subsection (b) the Committee recognizes that exceptions may be required to the recommendations made by the Secretary and provides procedures to be utilized by the President when the criteria established in subsection (b) are met. Specifically, if the President determines that reallocation or mixed use of certain frequencies may jeopardize the national defense, endanger the public's health and safety, deprive the Government of an important function, or cause the Government to incur undue costs he may substitute alternative frequencies for the frequencies that meet this criteria.

In addition, the President may delay implementation of frequency reallocations specified in the Secretary's report if it is determined that the required action cannot be completed by the recommended delayed effective dates or if such an action would result in a frequency being unused. These provisions will allow the maximum use of Federal Government frequency until it is transferred to the FCC for reassignment, and provide more flexibility for Government users of the frequency. Whenever a frequency is substituted for those recommended by the Secretary, the President is required to notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the reasons for such substitution.

Subsection (c) limits the ability of the President to delegate the functions assigned by the Act.

New Section 115. Distribution of Frequencies by the Commission. This section states that no less than one year after the President notifies the FCC of a frequency band to be reallocated, pursuant to section 114(a)(5), the Commission is required to submit to the President and Congress a plan for distribution of the reassigned frequencies. This plan shall not propose the immediate distribution of frequencies, and must take into account the timetable recommended by the Secretary. In order to provide a long-term solution for the scarcity of spectrum for emerging technologies, this section requires the Commission to reserve a significant portion of frequencies for distribution more than ten years after this legislation is enacted, with the remainder to be gradually distributed over a period of not less than ten years.

The provisions of the Commission's allocation plan must ensure the future availability of frequencies for new technologies and services; address the feasibility of reallocating spectrum from current commercial and non-federal uses to provide for more efficient use of the spectrum, and allow for innovation and marketplace development that may affect the relative efficiencies of different spectrum allocations. Nothing in this section shall prohibit the Commission from allocating bands of frequencies for specific purposes in future rulemaking proceedings.

The Committee does not intend that the report required by this section tie the Commission's hands during the long process of spectrum allocation envisaged by this legislation. Rather, the Committee ****597*270** assumes that the Commission will take account of new developments, including new technologies and services developed after the report has been submitted to the President and Congress, when it actually is called upon to allocate the spectrum at issue.

New Section 116. Authority to Recover Reassigned Frequencies. This new section establishes the process by which the President can reclaim frequencies which have already been reallocated to the FCC for reassignment.

Subsection (b) authorizes and establishes procedures pursuant which the President may reclaim frequencies which have not been distributed by the Commission. If frequencies have been assigned, the President must also provide a timetable to allow an orderly transition for FCC licensees to obtain new frequencies and necessary equipment, together with an estimate of the cost of displacing commercial licensees.

Subsection (c) stipulates that all costs of reclaiming frequencies pursuant to this section shall be borne by the Federal Government. Subsection (d) prohibits the Federal Communications Commission from withdrawing licenses for any reclaimed frequencies until the end of the fiscal year following the President's notification.

Subsection (e) stipulates that nothing contained in this chapter limits or otherwise affects the President's authority under sections 305 and 706 of the Communications Act, including his ability to withdraw or limit the use of all frequencies utilized by Government users. In particular the President's authority to limit or withdraw licenses to utilize the frequencies affected by the provisions of section 113(c)(4) is not affected by the provisions of this Act.

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New Section 117. Definitions.

CHAPTER 3–COMMUNICATIONS TECHNICAL AMENDMENTS

Sections 5241, 5242, 5243, 5244

This chapter makes a number of technical changes and corrections to the Communications Act and the National Telecommunications and Information Administration Organization Act.

Section 5241 contains clerical corrections to the Communications Act of 1934, to the Communications Satellite Act of 1962, and conforming amendments to the Omnibus Budget Reconciliation Act of 1981.

Section 5242 transfers provisions of law concerning public telecommunications facilities, children's educational television, and telecommunications demonstration program from the Communications Act of 1934 to the National Telecommunications and Information Administration Organization Act.

Section 5243 eliminates expired and outdated provisions from the Communications Act of 1934 and the Communications Satellite Act of 1962.

Section 5244 provides for stylistic consistency in the section designations and section headings of the Communications Act of 1934 and the Communications Satellite Act of 1962. These changes make clerical corrections, transfer certain sections without changing the substance, and eliminate expedited and outdated provisions ("deadwood").

****598*271** Subtitle D–Energy Programs

PURPOSE AND SUMMARY

Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1993 as passed by the Committee would extend the current user fee that pays for the budget of the Nuclear Regulatory Commission (NRC) to cover fiscal years 1996–1998. The purpose of the NRC user fee is to base the NRC's budget as much as possible on the principle that, where practical, the costs of government services should be paid for by the beneficiaries of those services.

The Budget Resolution (H. Con. Res. 64) assumed these offsetting collections in its instructions to the Committee. Therefore, passage of Subtitle D helps to fulfill the Committee's responsibility for deficit reduction in Budget Reconciliation.

BACKGROUND AND NEED FOR THE LEGISLATION

The NRC is responsible for ensuring the health and safety of the public through its research and regulatory programs. The independence and integrity of this agency is essential to maintaining the confidence of the public in the use of nuclear energy and radioactive materials.

Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508), requires the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees to provide offsetting collections to pay for its programs. Under that act, the amount of such charges:

(1) when added to other amounts collected by the NRC (i.e., fees under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701), must equal 100 percent of the NRC's program activities as provided in appropriations; and

(2) must be reasonably related to the regulatory service provided by the NRC.

However, current law only provided authority to collect fees and annual charges equal to 100 percent of the NRC's budget

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for five years, fiscal years 1991 through 1995. Without Congressional action, the NRC's authority to collect 100% of its costs through fees and annual charges would expire. Thereafter, the NRC's permanent authority to collect 33 percent of its budget authority through fees and annual charges would take effect.

The NRC budget is actually paid for from several sources. First, appropriations received by the NRC from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c) for licensing the Department of Energy's nuclear waste management program are not to be recovered by the annual charges. Since nuclear utilities are paying for the cost of the NRC's high-level waste licensing activities through their payments to the Nuclear Waste Fund, recovery of Nuclear Waste Fund appropriations through the annual charge would constitute double payment by the utilities.

Second, the amount recovered through annual charges is to be reduced further by the amount the NRC receives through fees assessed on licensees under the Independent Offices of Appropriation Act of 1952 (31 U.S.C. 9701), through Part 170 of the NRC's rules****599*272** (10 C.F.R. Part 170). These fees are intended to recover the costs to the NRC of providing individually identifiable services to applicants and holders of NRC licensees, though not the cost of generic activities that benefit licensees generally.

Finally, the balance of the NRC's annual budget authority after subtraction of amounts received from the Nuclear Waste Fund and the Independent Offices Appropriation Act fees is to be recovered from the NRC's licensees through the annual charges enacted in the Omnibus Budget Reconciliation Act of 1990.

Under current law, fees and annual charges are collected from NRC licensees at the discretion of the NRC. The Omnibus Budget Reconciliation Act of 1990 instructed the NRC to assess by rule the charge for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible. The Omnibus Budget Reconciliation Act of 1990 also intended the NRC to assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charge.

The NRC is presently undertaking a rulemaking designed to help ensure that the application of the current fee structure does not place an unfair burden on licensees, pursuant to Sec. 2903(c) of the Energy Policy Act (P.L. 102–486). Subtitle D does not alter the fee structure as currently collected by the NRC or as directed by the Omnibus Budget Reconciliation Act of 1990.

HEARINGS

The Committee's Subcommittee on Energy and Power did not hold hearings on Subtitle D of the Omnibus Budget Reconciliation Act of 1993.

COMMITTEE CONSIDERATION

On May 5, 1993, the Subcommittee on Energy and Power met in open session and ordered reported Subtitle D without amendment by a voice vote. On May 11, 1993, the Committee met in open session and ordered reported Subtitle D without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been

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submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that Subtitle D will generate revenues of $378 million in FY 1996, $389 million in ****600*273** FY 1997, and $402 million in FY 1998 to offset expenditures of the NRC.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The comprehensive letter of the Congressional Budget Office is found at the conclusion of the report on this Title of the bill.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: there will be no inflationary impact.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

This letter includes estimates reflecting action by the Committee on all reconciliation matters considered by the Committee.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. John Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation recommendations of the Committee on Energy and Commerce, as transmitted to the House Committee on the Budget, May 14, 1993.

The estimates included in the enclosed table represent the 1994–1998 effects on the Federal budget and on the budget resolution baseline of the Committee's legislative proposals affecting spending. CBO understands that the Committee on the Budget will be responsible for interpreting how savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lori Housman, Jean Hearne, and Patrick Purcell, who can be reached at 226–2820, and John Webb and Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

James L. Blum
(For Robert D. Reischauer, Director).

Enclosure.

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***280** CHANGES IN EXISTING LAW MADE BY TITLE V OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the

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bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I–GENERAL PROVISIONS

DEFINITIONS

Sec. 3. For the purposes of this Act, unless the context otherwise requires–

(a)***

* * * * * * *

(n) "Mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment of the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

* * * * * * *

[(gg) "Private land mobile service" means a mobile service which provides a regularly interacting group of base, mobile, portable, ***281** and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.]

PROVISIONS RELATING TO THE COMMISSION

Sec. 4. (a)***

* * * * * * *

(f)(1)***

* * * * * * *

(3) The Commission shall fix a reasonable rate of extra compensation for overtime services of engineers in charge and radio engineers of the Field Engineering and Monitoring Bureau of the Federal Communications Commission, who may be required to remain on duty between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian or on Sundays or holidays to perform services in connection with the inspection of ship radio equipment and apparatus for the purposes of part II of title III of this Act or the Great Lakes Agreement, on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime [exceeds] extends beyond 5 o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian) and two additional days' pay for Sunday or holiday duty. The said extra compensation for overtime services shall be paid by the master, owner, or agent of such vessel to the local United States collector of customs or his representative, who shall deposit such collection into the Treasury of the United States to an appropriately designated receipt account: Provided, That the amounts of such collections received by the said collector of customs or his representatives shall be covered into the Treasury as miscellaneous receipts; and the payments of such extra compensation to the several employees entitled thereto shall be made from the annual appropriations for salaries and expenses of the Commission: Provided further, That to the extent that the annual appropriations which are hereby authorized to be made from the general fund of the Treasury are insufficient, there are hereby authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary to the extent that the amounts of such receipts are in excess of the amounts appropriated: Provided further, That such extra

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compensation shall be paid if such field employees have been ordered to report for duty and have so reported whether the actual inspection of the radio equipment or apparatus takes place or not: And provided further, That in those ports where customary working hours are other than those hereinabove mentioned, the engineers in charge are vested with authority to regulate the hours of such employees so as to agree with prevailing working hours in said ports where inspections are to be made, but nothing contained in this proviso shall be construed in any manner to alter the length of a working day for the engineers in charge and radio engineers or the overtime pay herein fixed.

***282** ORGANIZATION AND FUNCTIONING OF THE COMMISSION

Sec. 5. (a)***

* * * * * * *

[(f)] (e) The Commission shall have a Managing Director who shall be appointed by the Chairman subject to the approval of the Commission. The Managing Director, under the supervision and direction of the Chairman, shall perform such administrative and executive functions as the Chairman shall delegate. The Managing Director shall be paid at a rate equal to the rate then payable for level V of the Executive Schedule.

* * * * * * *

NEW TECHNOLOGIES AND SERVICES

Sec. 7. (a)

* * * * * * *

(b) The Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed [or twelve months after the date of the enactment of this section, if later]. If the Commission initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated [or twelve months after the date of the enactment of this section, if later].

* * * * * * *

TITLE II–COMMON CARRIERS

INTERLOCKING DIRECTORATES–OFFICIALS DEALING IN SECURITIES

Sec. 212. [After sixty days from the enactment of this Act it shall] It shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this Act, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby: Provided, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person. After this section takes effect it shall be unlawful for any officer or director of any carrier subject to this Act to receive for his own benefit directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carriers, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carriers from any funds properly included in capital account.

***283** VALUATION OF CARRIER PROPERTY

Sec. 213. (a)***

* * * * * * *

[(g) Notwithstanding any provision of this Act the Interstate Commerce Commission, if requested to do so by the

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Commission, shall complete, at the earliest practicable date, such valuations of properties of carriers subject to this Act as are now in progress, and shall thereafter transfer to the Commission the records relating thereto.

[(h)] (g) Nothing in this section shall impair or diminish the powers of any State commission.

EXTENSION OF LINES

Sec. 214. (a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: Provided, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 [or 222] of this Act: Provided further, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

* * * * * * *

ACCOUNTS, RECORDS, AND MEMORANDA; DEPRECIATION CHARGES

Sec. 220. (a)***

***284** (b) The Commission shall[, as soon as practicable,] prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the [clasess] classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

* * * * * * *

COMPETITION AMONG RECORD CARRIERS

Sec. 222. (a) For purposes of this section:

[(1) The term "primary existing international record carrier" means any record carrier which (A) derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States; (B) is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States; and (C) is engaged in the direct provision of record communications services between the United

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States and four or more continents.

[(2)] (1) The term "record carrier" means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between two points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

[(3)] (2) The term "record communications service" means those services traditionally offered by telegraph companies, such as telegraph, telegram, telegram exchange, and similar services involving an interconnected network of teletypewriters.

(b)[(1)] The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by competition. In order to meet the purposes of this section, the Commission shall forbear from exercising its authority under this Act as the development of competition among ***285** record carriers reduces the degree of regulation necessary to protect the public.

[(2) In furtherance of the purposes of this section, record carriers shall not impose upon users of any regulated record communications services the costs of any other services or facilities (including terminal equipment), whether regulated or unregulated.

[(c)(1)(A)(i) In implementing its responsibilities under section 201(a), the Commission shall require each record carrier to make available to any other record carrier, upon reasonable request, full interconnection with any facility operated by such record carrier, and used primarily to provide record communications service. Such facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

[(ii)(I) Subject to the provisions of subclause (II), if a request for interconnection under clause (i) is for the purpose of providing international record communications service, then the agreement entered into under clause (i) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

[(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

[(B) The Commission shall require that–

[(i) if any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering interconnection requirements;

[(ii) in any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions; and

[(iii) in any case in which such separate international record carrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

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The requirements of clauses (i), (ii), and (iii) shall not apply to a record carrier if such record carrier does not have a significant share of the market for record communications services.

***286** [(2) If any request made by a record carrier under paragraph (1)(A)(i) will require an agreement under which any record communications service or facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the costs of the record communications service or facility employed as a result of such agreement.

[(3)(A) The Commission, as soon as practicable (but not later than fifteen days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting among all record carriers which the Commission determines would be parties to any agreement required by paragraph (1)(A)(i). Such meeting shall be held for the purpose of negotiating any such agreement. Representatives of the Commission shall attend such meeting for purposes of monitoring and presiding over such negotiations.

[(B)(i) In the case of any such required agreement, if–

[(I) the record carrier subject to the interconnection requirement; and

[(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the forty-five-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Any such agreement established by the Commission shall be binding upon such parties.

[(ii) Such interim or final order shall be issued not later than ninety days after the date on which the Commission convenes the meeting under subparagraph (A). In the case of any such required agreement, if–

[(I) the record carrier subject to the interconnection requirement; and

[(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

[(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement. After a carrier makes such an election, the ***287** terms and arrangements established by the agreement shall apply to such carrier to the extent practicable, as determined by the Commission.

[(4) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that (A) such agreement is not consistent with the purposes of this section; or (B) such agreement unjustly or unreasonably discriminates against any record carrier.

[(5) If the Western Union Telegraph Company submits an application to the Commission for authority to provide international record communication service, the Commission shall not have any authority to take any final action with respect

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to such application until the end of the one hundred and twenty-day period following the date a written agreement is entered into between such Company and other record carriers under paragraph (3), or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers. The limitation upon Commission authority established in this paragraph shall expire at the end of the two hundred and ten-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

[(d) Subject to the provisions of subsection (c)(5), each record carrier may provide record communications service in the United States domestic market and in the international market. Any record carrier seeking to provide domestic record communications service may provide such service without submitting an application to the Commission under section 214 unless the Commission requires such a submission. The Commission shall act expeditiously upon any application submitted pursuant to section 214.

[(e)(1) At the end of the 36-month period following the date of the enactment of the Record Carrier Competition Act of 1981, the provisions of subsection (c), other than paragraph (1)(B) of such subsection, shall cease to have any force or effect.

[(2) The provisions of paragraph (1) shall not be construed to affect the obligation of any carrier to interconnect with any other carrier pursuant to this Act.]

OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS

Sec. 223. (a)***

(b)(1)***

* * * * * * *

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant [restrict] restricted access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

REGULATION OF POLE ATTACHMENTS

Sec. 224. ***

(b)(1)***

***288** (2) [Within 180 days from the date of enactment of this section the Commission] The Commission shall prescribe by rule regulations to carry out the provisions of this section.

* * * * * * *

SEC. 226. TELEPHONE OPERATOR SERVICES.

(a)***

* * * * * * *

(d) General Rulemaking Required.–

(1)***

[(2) Deadlines.–The Commission shall initiate the proceeding required under paragraph (1) within 60 days after the date of enactment of this section and shall prescribe regulations pursuant to the proceeding not later than 210 days after such date of enactment. Such regulations shall take effect not later than 45 days after the date the regulations are prescribed.

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[(3)] (2) Contents of regulations.–The regulations prescribed under this section shall–

(A)***

* * * * * * *

[(4)] (3) Additional requirements to be implemented by regulations.–The regulations prescribed under this section shall, at a minimum–

(A)***

* * * * * * *

(e) Separate Rulemaking on Access and Compensation.–

(1) Access.–The Commission[, within 9 months after the date of enactment of this section,] shall require–

(A)***

* * * * * * *

SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

(a)***

* * * * * * *

(e) Effect on State Law.–

(1)***

(2) State use of databases.–If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national [datebase] database that relates to such State.

* * * * * * *

SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.

(a)***

* * * * * * *

***289** (c) Common Carrier Obligations.–Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

(1)***

* * * * * * *

(6) Billing for 800 calls.–A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in–

(A)***

* * * * * * *

(D) the calling party being called back collect for the provision of audio information services or simultaneous voice [conservation] conversation services.

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* * * * * * *

TITLE III–PROVISIONS RELATING TO RADIO

PART I–GENERAL PROVISIONS

* * * * * * *

APPLICATIONS FOR LICENSES; CONDITIONS IN LICENSE FOR FOREIGN COMMUNICATION

Sec. 308. (a)***

* * * * * * *

(c) The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 2 of an Act entitled "An Act relating to the landing and operation of submarine cables in the United States," approved May [24,] 27, 1921.

ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES

Sec. 309. (a)***

* * * * * * *

[(i)(1) If there is more than one application for any initial license or construction permit which will involve any use of the electromagnetic spectrum, then the Commission, after determining that each such application is acceptable for filing, shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.]

(i) Random Selection.–

(1) General authority.–If–

(A) there is more than one application for any initial license or construction permit which will involve a use of the electromagnetic spectrum; and

(B) the Commission has determined that the use is not described in subsection (j)(2)(A);

***290** then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) Determinations of qualifications.–No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purposes of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law–

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

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(3) Preferences; diversity.–(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term "media of mass communication" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4) Rulemaking schedule and authority.–(A) [The commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall,] The Commission shall, after notice and opportunity ***291** for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary too carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.

(j) Use of Competitive Bidding.–

(1) General authority.–If mutually exclusive applications are filed for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

(2) Uses to which bidding may apply.–A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that–

(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return–

(i) for the licensee enabling those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or
(ii) for the licensee enabling those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

(B) a system of competitive bidding will promote the objectives described in paragraph (3).

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(3) Design of systems of competitive bidding.–For each license or permit, or class of licenses or permits, that the Commission grants through the use of a competitive bidding system, the Commission shall, by rule, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. In identifying licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, ***292** including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

(D) efficient and intensive use of the electromagnetic spectrum.

(4) Contents of regulations.–In prescribing rules pursuant to paragraph (3), the Commission shall–

(A) consider alternative payment schedules and methods of calculation, including initial lump sums, installment or royalty payments, guaranteed annual minimum payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services; and

(D) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.

(5) Bidder and licensee qualification.–No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by rule, prescribe expedited procedures consistent with the procedures authorized by ***293** subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

(6) Rules of construction.–Nothing in this subsection, or in the use of competitive bidding, shall–

(A) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

(B) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection; or

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(C) be construed to prohibit the Commission from issuing nationwide licenses or permits.

(7) Limitation of effect on allocation decisions.–In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(A) and (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(8) Treatment of revenues.–All proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code. A license or permit issued by the Commission under this section shall not be treated as the property of the licensee for tax purposes by any State or local government entity.

(9) Termination; evaluation.–The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 1998. Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report–

(A) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(B) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(C) evaluating the extent to which such methodologies have secured prompt delivery of service to rural areas; and

(D) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection.

[SPECIAL PROVISION AS TO CANAL ZONE

[Sec. 328. This title shall not apply to the Canal Zone. In international radio matters the Canal Zone shall be represented by the Secretary of State.]

***294** [VERY HIGH FREQUENCY STATIONS] VERY HIGH FREQUENCY STATIONS AND AM RADIO STATIONS

Sec. 331. (a)***

(b) AM Radio Stations.–It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible. [The Commission shall report to the appropriate committees of Congress within 30 days after the date of enactment of this Act on how it intends to meet this policy goal.]

[PRIVATE LAND] MOBILE SERVICES

Sec. 332. (a) Management of Private Land Mobile Frequencies.–In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will–

(1) promote the safety of life and property;

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(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private land mobile services and other services.

[(b)(1)]

(b) Use of Advisory Committee.–

(1) Coordination of frequency assignment.– The Commission, in coordinating the assignment of frequencies to stations in the private land mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) Exemption.–The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(3) Nonemployee status.–Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Application of federal advisory committee act.–Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

***295** [(c)(1) For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

[(2) A person engaged in private land mobile service shall not, insofar as such person is so engaged, be deemed a common carrier for any purpose under this Act. A common carrier shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982.

[(3) No State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service.]

(c) Regulatory Treatment of Mobile Services.–

(1) Common carrier treatment of commercial mobile services.–(A) A person engaged in the provision of commercial mobile services shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may, consistent with the public interest, specify as inapplicable by rule. In prescribing any such rule, the Commission may not specify section 201, 202, or 208, or any other provision that the Commission determines to be necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with commercial mobile services are just and reasonable and are not unjustly or unreasonably discriminatory or is otherwise in the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to

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the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(2) Noncommon carrier treatment of private land mobile services.–A person engaged in private land mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as provider of private land mobile services prior to the enactment of the Licensing Improvement Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, ***296** except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State authority to regulate.–(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to impose any rate or entry regulation upon any commercial mobile service or any private land mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

(B) Notwithstanding subparagraph (A), a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that (i) such service is a substitute for land line telephone exchange service for a substantial portion of the public within such State, or (ii) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(4) Regulatory treatment of communications satellite corporation.–Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite of 1962 of the corporation authorized by title III of such Act.

(d) Definitions.–For purposes of this section–

(1) the term "commercial mobile service" means all mobile services (as defined in section 3(n)) that–

(A) are provided for profit (i) to the public, (ii) on an indiscriminate basis, or (iii) to such broad classes of eligible users as to be effectively available to a substantial portion of the public; and

(B) are interconnected (or have requested interconnection pursuant to paragraph (1)(B)) with the public switched network (as such terms are defined by regulation by the Commission); and

(2) the term "private mobile service" means any mobile service (as defined in section 3(n)) that is not a commercial mobile service.

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Part II Radio Equipment and Radio Operators on Board Ship

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***297** APPROVAL OF INSTALLATIONS

Sec. 358. [(a)] Insofar as is necessary to carry out the purposes and requirements of this part, the Commission shall have authority, for any ship subject to this part–

(1)***

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Part III–Radio Installations on Vessels Carrying Passengers for Hire

VESSELS TRANSPORTING MORE THAN SIX PASSENGERS FOR HIRE REQUIRED TO BE EQUIPPED WITH RADIO TELEPHONE

Sec. 381.***

VESSELS EXCEPTED FROM RADIOTELEPHONE REQUIREMENT

Sec. 382. ***

EXEMPTIONS BY COMMISSION

Sec. 383.***

AUTHORITY OF COMMISSION; OPERATIONS, INSTALLATIONS, AND ADDITIONAL EQUIPMENT

Sec. 384.***

INSPECTIONS

Sec. 385.***

FORFEITURES

Sec. 386.***

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Part IV–Assistance for Public Telecommunications Facilities; Telecommunications Demonstrations; Corporation for Public Broadcasting

[Subpart A–Assistance for Public Telecommunications Facilities

[DECLARATION OF PURPOSE

[Sec. 390. The purpose of this subpart is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

***298** [AUTHORIZATION OF APPROPRIATIONS

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[Sec. 391. There are authorized to be appropriated $42,000,000 for each of the fiscal years 1992, 1993, and 1994, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

[GRANTS FOR CONSTRUCTION AND PLANNING

[Sec. 392. (a) For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that–

[(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State;

[(2) the operation of such public telecommunication facilities will be under the control of the applicant;

[(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

[(4) such public telecommunications facilities will be used primarily for the provision of public telecommunications services and that the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services will not interfere with the provision of such public telecommunications services as required in this part;

[(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

[(6) the applicant will make the most efficient use of the grant.

[(b) Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such ***299** amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

[(c) The Secretary may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligible requirements of subsection (a) to receive construction assistance.

[(d) Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary, if such studies are conducted through the use of funds received under this section.

[(e) The Secretary shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

[(f) In establishing criteria for grants pursuant to section 393 and in establishing procedures relating to the order of priority

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established in subsection (e) in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

[(g) If, within 10 years after completion of any project for construcion of public telecommunications facilities with respect to which a grant has been made under this section–

[(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a)(1); or

[(2) such facilities cease to be used primarily for the provision of public telecommunications services (or the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services interferes with the provision of such public telecommunications services as required in this part);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

[(h) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all public telecommunications facilities under the control of such recipient, and records ***300** which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

[(i) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.

[CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

[Sec. 393. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

[(b) The Secretary shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) and designed to achieve–

[(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

[(2) the expansion of the service areas of existing public telecommunications entities;

[(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

[(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services, including services to underserved audiences such as deaf and hearing impaired individuals and blind and visually impaired individuals.

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[(c) Of the sums appropriated pursuant to section 391 for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.

[LONG-RANGE PLANNING FOR FACILITIES

[Sec. 393A. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390. Such plan shall include a detailed 5-year projection of the broadcast and nonbroadcast public telecommunications facilities required to meet such objectives, and the expenditures necessary to provide such facilities.

[(b) The plan required in subsection (a) shall be updated annually, and a summary of the activities of the Secretary in implementing ***301** the plan, shall be submitted concurrently to the President and the Congress not later than the 31st day of December of each year.

[Subpart B–National Endowment for Children's Educational Television

[ESTABLISHMENT OF NATIONAL ENDOWMENT

[Sec. 394. (a) It is the purpose of this section to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

[(b)(1) There is established, under the direction of the Secretary, a National Endowment for Children's Educational Television. In administering the National Endowment, the Secretary is authorized to–

[(A) contract with the Corporation for the production of educational television programming for children; and

[(B) make grants directly to persons proposing to create and produce educational television programming for children.

The Secretary shall consult with the Advisory Council on Children's Educational Television in the making of the grants or the awarding of contracts for the purpose of making the grants.

[(2) Contracts and grants under this section shall be made on the condition that the programming shall–

[(A) during the first two years after its production, be made available only to public television licensees and permittees and noncommercial television licensees and permittees; and

[(B) thereafter be made available to any commercial television licensee or permittee or cable television system operator, at a charge established by the Secretary that will assure the maximum practicable distribution of such programming, so long as such licensee, permittee, or operator does not interrupt the programming with commercial advertisements.

The Secretary may, consistent with the purpose and provisions of this section, permit the programming to be distributed to persons using other media, establish conditions relating to such distribution, and apply those conditions to any contract or grant made under this section. The Secretary may waive the requirements of subparagraph (A) if the Secretary finds that neither public television licensees and permittees nor noncommercial television licensees and permittees will have an opportunity to air such programming in the first two years after its production.

[(c)(1) The Secretary, with the advice of the Advisory Council on Children's Educational Television, shall establish criteria for making contracts and grants under this section. Such criteria shall be consistent with the purpose and provisions of this section and shall be made available to interested parties upon request. Such criteria shall include–

[(A) criteria to maximize the amount of programming that is produced with the funds made available by the Endowment;

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[(B) criteria to minimize the costs of–

[(i) selection of grantees,

[(ii) administering the contracts and grants, and

***302** [(iii) the administrative costs of the programming production; and

[(C) criteria to otherwise maximize the proportion of funds made available by the Endowment that are expended for the cost of programming production.

[(2) Applications for grants under this section shall be submitted to the Secretary in such form and containing such information as the Secretary shall require by regulation.

[(d) Upon approving any application for a grant under subsection (b)(1)(B), the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of the project for which the grant is made.

[(e)(1) The Secretary shall establish an Advisory Council on Children's Educational Television. The Secretary shall appoint ten individuals as members of the Council and designate one of such members to serve as Chairman.

[(2) Members of the Council shall have terms of two years, and no member shall serve for more than three consecutive terms. The members shall have expertise in the fields of education, psychology, child development, or television programming, or related disciplines. Officers and employees of the United States shall not be appointed as members.

[(3) While away from their homes or regular places of business in the performance of duties for the Council, the members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code.

[(4) The Council shall meet at the call of the Chairman and shall advise the Secretary concerning the making of contracts and grants under this section.

[(f)(1) Each recipient of a grant under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this section, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such grant, the total cost of the project, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

[(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to a grant received under this section.

[(g) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this section, including those relating to the order of priority in approving applications for projects under this section or to determining the amounts of contracts and grants for such projects.

[(h) There are authorized to be appropriated $2,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994 to be used by the Secretary to carry out the provisions of this section. Sums appropriated ***303** under this subsection for any fiscal year shall remain available for contracts and grants for projects for which applications approved under this section have been submitted wtihin one year after the last day of such fiscal year.

[(i) For purposes of this section–

[(1) the term "educational television programming for children" means any television program which is directed to an

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audience of children who are 16 years of age or younger and which is designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children; and

[(2) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or State or local governmental entity.

[Subpart C–Telecommunications Demonstrations

[ASSISTANCE FOR DEMONSTRATION PROJECTS

[Sec. 395. (a) It is the purpose of this subpart to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with, public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

[(b) The Secretary may approve an application submitted under subsection (a) if he determines that–

[(1) the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this subpart;

[(2) demonstrations and related activities assisted under this subpart will remain under the administration and control of the applicant;

[(3) the applicant has the managerial and technical capability to carry out the project for which the application is made; and

[(4) the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

[(c) Upon approving any application under this subpart with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

[(d) Funds made available pursuant to this subpart shall not be available for the construction, remodeling, or repair of structures to ***304** house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incidental to the installation of such facilities or equipment.

[(e) For purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

[(f) The funding of any demonstration pursuant to this subpart shall continue for not more than 3 years from the date of the original grant or contract.

[(g) The Secretary shall require that the recipient of a grant or contract under this subpart submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

[(h)(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking

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supplied by other sources, and such other records as will facilitate an effective audit.

[(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.

[(i) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under this subpart or to determining the amounts of grants for such projects.

[(j) The Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation in the administration of the Secretary's functions udner this subpart which are of interest to or affect the functions of the Corporation.

[(k) There are authorized to be appropriated $1,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary to carry out the provisions of this subpart. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.]

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***305** TITLE IV–PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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USE OF JOINT BOARDS–COOPERATION WITH STATE COMMISSIONS

Sec. 410. (a)***

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(c) The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this Act, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, power, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral agrument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions[, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act,] and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

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DESIGNATION OF AGENT FOR SERVICE

Sec. 413. It shall be the duty of every carrier subject to this Act [, within sixty days after the taking effect of this Act,] to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and process

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and orders, decisions, and requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the District of Columbia, with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, ***306** order, requirement, or decision in the office of the secretary of the Commission.

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TITLE VI–CABLE COMMUNICATIONS

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REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT

Sec. 624. (a)***

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(d)(1) Nothing in this title shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2)[(A)] In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

[(B) Subparagraph (A) shall take effect 180 days after the effective date of this title.]

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TITLE VII–MISCELLANEOUS PROVISIONS

* * * * * * *

[REPEALS AND AMENDMENTS

[Sec. 702. (a) The Radio Act of 1927, as amended, is hereby repealed.

[(b) The provisions of the Interstate Commerce Act, as amended, insofar as they relate to communications by wire or wireless, or to telegraph, telephone, or cable companies operating by wire or wireless, except the last proviso of section 1(5) and the provisions of section 1(7), are hereby repealed.

[(c) The last sentence of section 2 of the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," approved May 27, 1921, is amended to read as follows: "Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission with respect to the transmission of messages."

[(d) The first paragraph of section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, is amended to read as follows:

["Sec. 11. That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission ***307** where applicable to common carriers engaged in wire or radio communications or radio transmission of energy; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:"

[(e) The Act entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers",

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approved June 24, 1910, as amended, is hereby repealed.

[TRANSFER OF EMPLOYEES, RECORDS, PROPERTY, AND APPROPRIATIONS

[Sec. 703. (a) All offices and employees of the Federal Radio Commission (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Commission are necessary to the efficient operation of the Commission are hereby transferred to the Commission, without change in classification or compensation; except that the Commission may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

[(b) There are hereby transferred to the jurisdiction and control of the Commission (1) all records and property (including office furniture and equipment, and including monitoring radio stations) under the jurisdiction of the Federal Radio Commission, and (2) all records under the jurisdiction of the Interstate Commerce Commission and of the Postmaster General relating to the duties, powers, and functions imposed upon and vested in the Commission by this Act.

[(c) All appropriations and unexpended balances of appropriations available for expenditure by the Federal Radio Commission shall be available for expenditure by the Commission for any and all objects of expenditure authorized by this Act in the discretion of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906.]

EFFECT OF TRANSFERS, REPEALS, AND AMENDMENTS

Sec. 704. (a)***

[(b) Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission, if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission by this Act, or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this Act.

[(c)] (b) All records transferred to the Commission under this Act shall be available for use by the Commission to the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communication, and all orders of the ***308** Interstate Commerce Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this Act.

[(d) The provisions of this Act shall not affect suits commenced prior to the date of the organization of the Commission; and all such suits shall be continued, proceedings therein had, appeals therein taken and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, and duties from such agency or officer to the Commission under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Commission.]

UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

Sec. 705. (a)***

* * * * * * *

(e)(1)***

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(3)(A) Any person aggrieved by any violation of subsection (a) or [paragraph (4) of subsection (d)] paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

* * * * * * *

[(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission] (g) The Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account–

(1)***

* * * * * * *

[(g)] (h) If the Commission finds, based on the information gathered from the inquiry required by subsection [(f)] (g), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

* * * * * * *

TELEPHONE SERVICE FOR THE DISABLED

Sec. 710. (a)***

* * * * * * *

(f) [The Commission shall complete rulemaking actions required by this section and issue specific and detailed rules and regulations resulting therefrom within one year after the date of enactment of ***309** the Telecommunications for the Disabled Act of 1982. The Commission shall complete rulemaking actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after the date of enactment of such Act. Thereafter, the Commission] The Commission shall periodically review the regulations established pursuant to this section. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

* * * * * * *

SYNDICATED EXCLUSIVITY

Sec. 712. (a) The Federal Communications Commission shall[, within 120 days after the effective date of the Satellite Home Viewer Act of 1988,] initiate a combined inquiry and rulemaking proceeding for the purpose of–

(1)***

* * * * * * *

[DISCRIMINATION

[Sec. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.]

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ORGANIZATION ACT

AN ACT To authorize appropriations for the National Telecommunications and Information Administration, and for other purposes.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommunications Authorization Act of 1992".

TITLE I–NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

PART A–ORGANIZATION AND FUNCTIONS

SEC. 101. SHORT TITLE.

This title may be cited as the "National Telecommunications and Information Administration Organization Act".

* * * * * * *

***310** PART B–EMERGING TELECOMMUNICATIONS TECHNOLOGIES

SEC. 111. FINDINGS.

The Congress finds that–

(1) the Federal Government currently reserves for its own use, or has priority of access to, approximately 40 percent of the electromagnetic spectrum that is assigned for use pursuant to the Communications Act of 1934;

(2) many of such frequencies are underutilized by Federal Government licensees;

(3) the public interest requires that many of such frequencies be utilized more efficiently by Federal Government and non-Federal licensees;

(4) additional frequencies are assigned for services that could be obtained more efficiently from commercial carriers or other vendors;

(5) scarcity of assignable frequencies for licensing by the Commission can and will–

(A) impede the development and commercialization of new telecommunications products and services;

(B) limit the capacity and efficiency of the United States telecommunications systems;

(C) prevent some State and local police, fire, and emergency services from obtaining urgently needed radio channels; and

(D) adversely affect the productive capacity and international competitiveness of the United States economy;

(6) a reassignment of these frequencies can produce significant economic returns; and

(7) the Secretary of Commerce, the President, and the Federal Communications Commission should be directed to take appropriate steps to correct these deficiencies.

SEC. 112. NATIONAL SPECTRUM PLANNING.

(a) Planning Activities.–The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues–

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(1) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

(2) the spectrum allocation actions necessary to accommodate those uses; and

(3) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

(b) Reports.–The Assistant Secretary and the Chairman of the Commission shall submit a joint annual report to the Committee on Energy and Commerce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Secretary, and the Commission on the joint spectrum planning activities conducted under subsection (a) and recommendations for action developed pursuant to such activities.

***311** (c) Reporting Requirements.–The first annual report submitted after the date of the report by the advisory committee under section 113(d)(4) shall–

(1) include an analysis of and response to that committee report; and

(2) include an analysis of the effect on spectrum efficiency and the cost of equipment to Federal spectrum users of maintaining separate allocations for Federal Government and non-Federal Government licensees for the same or similar services.

SEC. 113. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

(a) Identification Required.–The Secretary shall, within 24 months after the date of the enactment of this part, prepare and submit to the President and the Congress a report identifying bands of frequencies that–

(1) are allocated on a primary basis for Federal Government use and eligible for licensing pursuant to section 305(a) of the Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the Federal Government;

(3) can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the Act (other than for Federal Government stations under such section 305);

(4) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits that may be obtained by non-Federal licensees; and

(5) are most likely to have the greatest potential for productive uses and public benefits under the Act.

(b) Minimum Amount of Spectrum Recommended.–

(1) In general.–Based on the report required by subsection (a), the Secretary shall recommend for reallocation, for use other than by Federal Government stations under section 305 of the Act (47 U.S.C. 305), bands of frequencies that span a total of not less than 200 megahertz, that are located below 6 gigahertz, and that meet the criteria specified in paragraphs (1) through (4) of subsection (a). The Secretary may not include, in such 200 megahertz, bands of frequencies that span more than 20 megahertz and that are located between 5 and 6 gigahertz. If the report identifies (as meeting such criteria) bands of frequencies spanning more than 200 megahertz, the report shall identify and recommend for reallocation those bands (spanning not less than 200 megahertz) that meet the criteria specified in paragraph (5) of such subsection.

(2) Mixed uses permitted to be counted.–Bands of frequencies which the Secretary's report recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the Act for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) of

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this subsection, except that–

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimum required by paragraph (1) of this subsection;

***312** (B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

(C) the operational sharing permitted under this paragraph shall be subject to coordination procedures which the Commission shall establish and implement to ensure against harmful interference.

(c) Criteria for Identification.–

(1) Needs of the federal government.–In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall–

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial carrier or other vendor;

(B) seek to promote–

(i) the maximum practicable reliance on commercially available substitutes;
(ii) the sharing of frequencies (as permitted under subsection (b)(2));
(iii) the development and use of new communications technologies; and
(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid–

(i) serious degradation of Federal Government services and operations; and
(ii) excessive costs to the Federal Government and users of Federal Government services.

(2) Feasibility of use.–In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall–

(A) assume such frequencies will be assigned by the Commission under section 303 of the Act (47 U.S.C. 303) over the course of not less than 15 years;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for licensing by the Commission for non-Federal use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

(3) Analysis of benefits.–In determining whether a band of frequencies meets the criteria specified in subsection (a)(4), the Secretary shall consider–

***313** (A) the extent to which equipment is or will be available that is capable of utilizing the band;

(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use; and

(C) the activities of foreign governments in making frequencies available for experimentation or commercial assignments

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in order to support their domestic manufacturers of equipment.

(4) Power agency frequencies.–

(A) Eligible for mixed use only.–The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) in geographically separate areas and shall not be recommended for the purposes of withdrawing that assignment. In any case where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall, consistent with the procedures established under subsection (b)(2)(C), not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(B) Definition.–As used in this paragraph, the term "Federal power agency" means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, or the Southwestern Power Administration.

(d) Procedure for Identification of Reallocable Bands of Frequencies.–

(1) Submission of preliminary identification to congress.–Within 12 months after the date of the enactment of this part, the Secretary shall prepare and submit to the Congress a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

(2) Convening of advisory committee.–Not later than the date the Secretary submits the report required by paragraph (1), the Secretary shall convene an advisory committee to–

(A) review the bands of frequencies identified in such report;

(B) advise the Secretary with respect to (i) the bands of frequencies which should be included in the final report required by subsection (a), and (ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receive public comment on the Secretary's report and on the final report; and

(D) prepare and submit the report required by paragraph (4).

The advisory committee shall meet at least monthly until each of the actions required by section 114(a) have taken place.

(3) Composition of committee; chairman.–The advisory committee shall include–

(A) the Chairman of the Commission and the Assistant Secretary, and one other representative of the Federal Government as designated by the Secretary; and

***314** (B) representatives of–

(i) United States manufacturers of spectrum-dependent telecommunications equipment;
(ii) commercial carriers;
(iii) other users of the electromagnetic spectrum, including radio and television broadcast licensees, State and local public safety agencies, and the aviation industry; and
(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum.

A majority of the members of the committee shall be members described in subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) Recommendations on spectrum allocation procedures.–The advisory committee shall, not later than 36 months after the date of the enactment of this part, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, a report containing such recommendations as the advisory committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between Federal and non-Federal use, and any dissenting views thereon.

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(e) Timetable for Reallocation and Limitation.–

(1) Timetable required.–The Secretary shall, as part of the report required by subsection (a), include a timetable that recommends immediate and delayed effective dates by which the President shall withdraw or limit assignments on the frequencies specified in the report.

(2) Expedited reallocation of initial 30 mhz permitted.–The Secretary may prepare and submit to the President a report which specifically identifies an initial 30 megahertz of spectrum that meets the criteria described in subsection (a) and that can be made available for reallocation immediately upon issuance of the report required by this section.

(3) Delayed effective date.–The recommended delayed effective dates shall–

(A) permit the earliest possible reallocation of the frequency bands, taking into account the requirements of section 115(1);

(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(C) be based on the need to coordinate frequency use with other nations; and

(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

SEC. 114. WITHDRAWAL OF ASSIGNMENT TO FEDERAL GOVERNMENT STATIONS.

(a) In General.–The President shall–

***315** (1) within 6 months after receipt of the Secretary's report under section 113(a), withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

(2) within such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 113(b)(2);

(3) by the delayed effective date recommended by the Secretary under section 113(e) (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

(4) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(5) transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

(b) Exceptions.–

(1) Authority to substitute.–If the President determines that a circumstance described in paragraph (2) exists, the President–

(A) may substitute an alternative frequency or band of frequencies for the frequency or band that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency or band in the manner required by subsection (a); and

(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

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(2) Grounds for substitution.–For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national defense interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

(C) the reassignment would seriously jeopardize public health or safety; or

(D) the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency.

(3) Criteria for substituted frequencies.–For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the report of the Secretary under section 113(a) unless the substituted frequency also meets each of the criteria specified by section 113(a).

(4) Delays in implementation.–If the President determines that any action cannot be completed by the delayed effective ***316** date recommended by the Secretary pursuant to section 113(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 115, the President may–

(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(c) Limitation on Delegation.–Notwithstanding any other provision of law, the authorities and duties established by this section may not be delegated.

SEC. 115. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

Not later than 1 year after the President notifies the Commission pursuant to section 114(a)(5), the Commission shall prepare, in consultation with the Assistant Secretary when necessary, and submit to the President and the Congress, a plan for the distribution under the Act of the frequency bands reallocated pursuant to the requirements of this part. Such plan shall–

(1) not propose the immediate distribution of all such frequencies, but, taking into account the timetable recommended by the Secretary pursuant to section 113(e), shall propose–

(A) gradually to distribute the frequencies remaining, after making the reservation required by subparagraph (B), over the course of a period of not less than 10 years beginning on the date of submission of such plan; and

(B) to reserve a significant portion of such frequencies for distribution beginning after the end of such 10-year period;

(2) contain appropriate provisions to ensure–

(A) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Act (47 U.S.C. 157); and

(B) the availability of frequencies to stimulate the development of such technologies;

(3) address (A) the feasibility of reallocating spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations; and

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(4) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

SEC. 116. AUTHORITY TO RECOVER REASSIGNED FREQUENCIES.

(a) Authority of President.–Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 114, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

(b) Procedure for Reclaiming Frequencies.–

(1) Unallocated frequencies.–If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the Act, the President shall follow the procedures ***317** for substitution of frequencies established by section 114(b) of this part.

(2) Allocated frequencies.–If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part, except that the notification required by section 114(b)(1)(A) shall include–

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

(c) Costs of Reclaiming Frequencies; Appropriations Authorized.–The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency band, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(d) Effective Date of Reclaimed Frequencies.–The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which the President's notification is received.

(e) Effect on Other Law.–Nothing in this section shall be construed to limit or otherwise affect the authority of the President under sections 305 and 706 of the Act (47 U.S.C. 305, 606).

SEC. 117. DEFINITIONS.

As used in this part:

(1) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(2) The term "assignment" means an authorization given to a station licensee to use specific frequencies or channels.

(3) The term "commercial carrier" means any entity that uses a facility licensed by the Federal Communications Commission pursuant to the Communications Act of 1934 for hire or for its own use, but does not include Federal Government stations licensed pursuant to section 305 of the Act (47 U.S.C. 305).

(4) The term "the Act" means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

***318** PART C–ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; CHILDREN'S EDUCATIONAL TELEVISION; TELECOMMUNICATIONS DEMONSTRATIONS

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Subpart 1–Assistance for Public Telecommunications Facilities

DECLARATION OF PURPOSE

Sec. 121. The purpose of this subpart is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

AUTHORIZATION OF APPROPRIATIONS

Sec. 122. There are authorized to be appropriated $42,000,000 for each of the fiscal years 1992, 1993, and 1994, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

GRANTS FOR CONSTRUCTION AND PLANNING

Sec. 123. (a) For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that–

(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State;

(2) the operation of such public telecommunication facilities will be under the control of the applicant;

***319** (3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

(4) such public telecommunications facilities will be used primarily for the provision of public telecommunications services and that the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services will not interfere with the provision of such public telecommunications services as required in this part;

(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

(6) the applicant will make the most efficient use of the grant.

(b) Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary shall make a grant to the applicant in an amount determined by the Secretary,

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except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

(c) The Secretary may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligible requirements of subsection (a) to receive construction assistance.

(d) Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary, if such studies are conducted through the use of funds received under this section.

(e) The Secretary shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

(f) In establishing criteria for grants pursuant to section 393 and in establishing procedures relating to the order of priority established in subsection (e) in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

(g) If, within 10 years after completion of any project for construcion of public telecommunications facilities with respect to which a grant has been made under this section–

(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a)(1); or

***320** (2) such facilities cease to be used primarily for the provision of public telecommunications services (or the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services interferes with the provision of such public telecommunications services as required in this part);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

(h) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all public telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(i) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.

CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

Sec. 124. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

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(b) The Secretary shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) and designed to achieve–

(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) the expansion of the service areas of existing public telecommunications entities;

(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services, including services to underserved audiences such as deaf ***321** and hearing impaired individuals and blind and visually impaired individuals.

(c) Of the sums appropriated pursuant to section 391 for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.

LONG-RANGE PLANNING FOR FACILITIES

Sec. 125. (a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 121. Such plan shall include a detailed 5-year projection of the broadcast and nonbroadcast public telecommunications facilities required to meet such objectives, and the expenditures necessary to provide such facilities.

(b) The plan required in subsection (a) shall be updated annually, and a summary of the activities of the Secretary in implementing the plan, shall be submitted concurrently to the President and the Congress not later than the 31st day of December of each year.

Subpart 2–National Endowment for Children's Television

ESTABLISHMENT OF NATIONAL ENDOWMENT

Sec. 131. (a) It is the purpose of this section to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

(b)(1) There is established, under the direction of the Secretary, a National Endowment for Children's Educational Television. In administering the National Endowment, the Secretary is authorized to–

(A) contract with the Corporation for the production of educational television programming for children; and

(B) make grants directly to persons proposing to create and produce educational television programming for children.

The Secretary shall consult with the Advisory Council on Children's Educational Television in the making of the grants or the awarding of contracts for the purpose of making the grants.

(2) Contracts and grants under this section shall be made on the condition that the programming shall–

(A) during the first two years after its production, be made available only to public television licensees and permittees and noncommercial television licensees and permittees; and

(B) thereafter be made available to any commercial television licensee or permittee or cable television system operator, at a

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charge established by the Secretary that will assure the maximum practicable distribution of such programming, so long as such licensee, permittee, or operator does not interrupt the programming with commercial advertisements.

The Secretary may, consistent with the purpose and provisions of this section, permit the programming to be distributed to persons using other media, establish conditions relating to such distribution, ***322** and apply those conditions to any contract or grant made under this section. The Secretary may waive the requirements of subparagraph (A) if the Secretary finds that neither public television licensees and permittees nor noncommercial television licensees and permittees will have an opportunity to air such programming in the first two years after its production.

(c)(1) The Secretary, with the advice of the Advisory Council on Children's Educational Television, shall establish criteria for making contracts and grants under this section. Such criteria shall be consistent with the purpose and provisions of this section and shall be made available to interested parties upon request. Such criteria shall include–

(A) criteria to maximize the amount of programming that is produced with the funds made available by the Endowment;

(B) criteria to minimize the costs of–

(i) selection of grantees,

(ii) administering the contracts and grants, and

(iii) the administrative costs of the programming production; and

(C) criteria to otherwise maximize the proportion of funds made available by the Endowment that are expended for the cost of programming production.

(2) Applications for grants under this section shall be submitted to the Secretary in such form and containing such information as the Secretary shall require by regulation.

(d) Upon approving any application for a grant under subsection (b)(1)(B), the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of the project for which the grant is made.

(e)(1) The Secretary shall establish an Advisory Council on Children's Educational Television. The Secretary shall appoint ten individuals as members of the Council and designate one of such members to serve as Chairman.

(2) Members of the Council shall have terms of two years, and no member shall serve for more than three consecutive terms. The members shall have expertise in the fields of education, psychology, child development, or television programming, or related disciplines. Officers and employees of the United States shall not be appointed as members.

(3) While away from their homes or regular places of business in the performance of duties for the Council, the members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code.

(4) The Council shall meet at the call of the Chairman and shall advise the Secretary concerning the making of contracts and grants under this section.

(f)(1) Each recipient of a grant under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this section, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such grant, the total cost of the project, ***323** the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that

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are pertinent to a grant received under this section.

(g) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this section, including those relating to the order of priority in approving applications for projects under this section or to determining the amounts of contracts and grants for such projects.

(h) There are authorized to be appropriated $2,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994 to be used by the Secretary to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year shall remain available for contracts and grants for projects for which applications approved under this section have been submitted wtihin one year after the last day of such fiscal year.

(i) For purposes of this section–

(1) the term "educational television programming for children" means any television program which is directed to an audience of children who are 16 years of age or younger and which is designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children; and

(2) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or State or local governmental entity.

Subpart 3–Telecommunications Demonstrations

ASSISTANCE FOR DEMONSTRATION PROJECTS

Sec. 135. (a) It is the purpose of this subpart to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with, public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

(b) The Secretary may approve an application submitted under subsection (a) if he determines that–

(1) the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this subpart;

***324** (2) demonstrations and related activities assisted under this subpart will remain under the administration and control of the applicant;

(3) the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

(c) Upon approving any application under this subpart with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(d) Funds made available pursuant to this subpart shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incidental to the installation of such facilities or equipment.

(e) For purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable

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television systems, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

(f) The funding of any demonstration pursuant to this subpart shall continue for not more than 3 years from the date of the original grant or contract.

(g) The Secretary shall require that the recipient of a grant or contract under this subpart submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

(h)(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.

(i) The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for ***325** projects under this subpart or to determining the amounts of grants for such projects.

(j) The Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Corporation.

(k) There are authorized to be appropriated $1,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary to carry out the provisions of this subpart. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.

[Part B–Special and Temporary Provisions]

PART D–SPECIAL AND TEMPORARY PROVISIONS

SEC.[131.] 151. AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION.

There are authorized to be appropriated for the administration of the NTIA $17,600,000 for fiscal year 1992 and $17,900,000 for fiscal year 1993, and such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs.

SEC.[132.] 152. NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION.

Section 394(h) of the Communications Act of 1934 (47 U.S.C. 394(h)) is amended–

(1) ***

* * * * * * *

SEC. [133.] 153. PEACESAT PROGRAM.

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(a) Findings.–Section 2(a) of the Act entitled "An Act to authorize appropriations for activities of the National Telecommunications and Information Administration for Fiscal Years 1990 and 1991", approved November 15, 1990 (Public Law 101–555; 104 Stat. 2758), is amended–

(1) ***

* * * * * * *

SEC. [134.] 154. COMMUNICATIONS FOR RURAL HEALTH PROVIDERS.

(a) Purpose.–It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in–

***326** (1) ***

* * * * * * *

SEC.[135.] 155. REPORT ON THE ROLE OF TELECOMMUNICATIONS IN HATE CRIMES.

(a) Requirement of Report.–Within 240 days after the date of enactment of this Act, the NTIA, with the assistance of the Commission, the Department of Justice, and the United States Commission on Civil Rights, shall prepare a report on the role of telecommunications in crimes of hate and violent acts against ethnic, religious, and racial minorities and shall submit such report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

* * * * * * *

COMMUNICATIONS SATELLITE ACT OF 1962

* * * * * * *

TITLE II–FEDERAL COORDINATION, PLANNING, AND REGULATION

IMPLEMENTATION OF POLICY

Sec. 201. In order to achieve the objectives and to carry out the purposes of this Act–

(a) the President shall–

(1) aid in the planning and development and foster the execution of a national program for the establishment and operation, [as expeditiously as possible], of a commercial communications satellite system;

* * * * * * *

TITLE III–CREATION OF A COMMUNICATIONS SATELLITE CORPORATION

[CREATION OF CORPORATION

[Sec. 301. There is hereby authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

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[PROCESS OF ORGANIZATION

[Sec. 302. The President of the United States shall appoint incorporators, by and with the advice and consent of the Senate, who shall serve as the initial board of directors until the first annual meeting of stockholders or until their successors are elected and qualified. Such incorporators shall arrange for an initial stock offering and take whatever other actions are necessary to establish ***327** the corporation, including the filing of articles of incorporation, as approved by the President.]

SEC. 301. CREATION OF CORPORATION.

There is authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government.

SEC. 302. APPLICABLE LAWS.

The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

DIRECTORS AND OFFICERS

Sec. 303. (a) The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the numbers of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock ***328** of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section [27(d)] 327(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. [29–911(d)] 29–327(d)). The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than $66^{2}/_{3}$ per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together if such vote complies with all other requirements of this Act and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of section [36] 336 of the District of Columbia Business Corporation Act (D.C. Code, sec. [29–916d] 29–336(d)), provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.

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FINANCING OF THE CORPORATION

Sec. 304. (a) The corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, without par value, which shall carry voting rights and be eligible for dividends. The shares of such stock initially offered shall be sold [at a price not in excess of $100 for each share and] in a manner to encourage the widest distribution to the American public. Subject to the provisions of subsections (b) and (d) of this section, shares of stock offered under this subsection may be issued to and held by any person.

* * * * * * *

(d) Not more than an aggregate of 20 per centum of the shares of stock of the corporation authorized by subsection (a) of this section which are held by holders other than authorized carriers may be held by persons of the classes described in [paragraphs (1), (2), (3), (4), and (5) of section 310(a)] subsection (a) and paragraphs (1) through (4) of subsection (b) of section 310 of the Communications Act of 1934, as amended (47 U.S.C. 310).

(e) The requirement of section [45(b)] 345(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. [29–920(b)] 29–345(b)) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of ***329** the stock of the corporation, and they may exercise such rights without regard to the percentage of stock they hold.

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TITLE IV–MISCELLANEOUS

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REPORTS TO THE CONGRESS

Sec. 404. [(a) The President shall transmit to the Congress in January of each year a report which shall include a comprehensive description of the activities and accomplishments during the preceding calendar year under the national program referred to in section 201(a)(1), together with an evaluation of such activities and accomplishments in terms of the attainment of the objectives of this Act and any recommendations for additional legislative or other action which the President may consider necessary or desirable for the attainment of such objectives.

[(b)] The corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act.

[(c) The Commission shall transmit to the Congress, annually and at such other times as it deems desirable, (i) a report of its activities and actions on anticompetitive practices as they apply to the communications satellite programs; (ii) an evaluation of such activities and actions taken by it within the scope of its authority with a view to recommending such additional legislation which the Commission may consider necessary in the public interest; and (iii) an evaluation of the capital structure of the corporation so as to assure the Congress that such structure is consistent with the most efficient and economical operation of the corporation.]

TITLE V–INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS

* * * * * * *

DECLARATION OF POLICY AND PURPOSE

Sec. 502. (a) ***

(b) It is the purpose of this title to provide that the participation of the United States in INMARSAT shall be through the [Communications Satellite Corporation] communications satellite corporation established pursuant to title III of this Act, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

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DESIGNATED OPERATING ENTITY

Sec. 503. (a)(1) The [Communications Satellite Corporation] communications satellite corporation established pursuant to title III of this Act is hereby designated as the sole operating entity of the United States for participation in INMARSAT, for the purpose of providing international maritime satellite telecommunications services.

***330** [(2) The corporation also shall have authority to participate in any other maritime satellite telecommunications system on an interim basis to serve the maritime commercial and safety needs of the United States through an interim operating arrangement in accordance with subsection (b).

[(3)] (2) The corporation may participate in and is hereby authorized to sign the operating agreement or other pertinent instruments of INMARSAT as the sole designated operating entity of the United States.

[(b)(1) The corporation may participate in any maritime satellite telecommunications system under subsection (a)(2) only if–

[(A) the corporation signs the operating agreement of INMARSAT before beginning such participation;

[(B) such participation is in the nature of an interim operating arrangement remaining in effect only until INMARSAT begins its operations; and

[(C) (i) in the case of participation which may be undertaken only pursuant to a treaty or executive agreement, such treaty or executive agreement is in effect; or

[(ii) in any case in which participation does not require any treaty or executive agreement, the President does not disapprove such participation during the period of 60 calendar days after the corporation notifies the President of such proposed participation.

[(2) If the corporation participates in an interim operating arrangement with a maritime satellite telecommunications system under this subsection, the provisions of this title relating to participation of the corporation in INMARSAT also shall apply to such interim participation.

[(3) Any disapproval by the President under paragraph (1)(C)(ii) shall be published in the Federal Register as soon as practicable after the date of such disapproval.]

[(c)] (b) The corporation–

(1) may own and operate satellite earth terminal stations in the United States;

* * * * * * *

[(d)] (c) The corporation shall be responsible for fulfilling any financial obligation placed upon the corporation as a signatory to the operating agreement or other pertinent instruments, and any other financial obligation which may be placed upon the corporation as the result of a convention or other instrument establishing INMARSAT. The corporation shall be the sole United States representative in the managing body of INMARSAT.

[(e)] (d)(1) Any person, including the Federal Government or any agency thereof, may be authorized, in accordance with paragraph (2) or paragraph (3), to be the sole owner or operator, or both, of any satellite earth terminal station if such station is used for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such station, or in carrying out experimentation relating to maritime satellite telecommunications services.

* * * * * * *

***331** [(f)] (e) The Commission may authorize ownership of satellite earth terminal stations by persons other than the corporation at any time the Commission determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.

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[(g)] (f) The Commission shall determine the operational arrangements under which the corporation shall interconnect its satellite earth terminal station facilities and services with United States domestic common carriers and international common carriers, other than any common carrier, system, or other entity in which the corporation has any ownership interest, and private communications systems when authorized pursuant to subsection [(c)(3)] (b)(3) for the purpose of extending maritime satellite telecommunications services within the United States and in other areas. [The initial determination of operational arrangements shall be made by the Commission no later than 6 months after the effective date of this title, and the Commission shall thereupon transmit to the Congress a report relating to such determination.]

[(h)] (g) Notwithstanding any provision of State law, the articles of incorporation of the corporation shall provide for the continued ability of the board of directors of the corporation to transact business under such circumstances of national emergency as the President or his delegate may determine would not permit a prompt meeting of the number of directors otherwise required to transact business.

* * * * * * *

[STUDY OF STRUCTURE AND ACTIVITIES OF COMMUNICATIONS SATELLITE CORPORATION

[Sec. 505. (a) The Commission shall conduct a study of the corporate structure and operating activities of the corporation, with a view toward determining whether any changes are required to ensure that the corporation is able to effectively fulfill its obligations and carry out its functions under this Act and the Communications Act of 1934.

[(b) The Commission shall transmit a report to the Congress not later than 18 months after the effective date of this title relating to the study of the corporation conducted under subsection (a). Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

[STUDY OF PUBLIC MARITIME COAST STATION SERVICES

[Sec. 506. (a) The Commission shall conduct a study of public maritime coast station services, with particular emphasis on high seas services, with a view toward determining whether the rules and regulations of the Commission and the assignment of licenses and radio frequencies in effect on the effective date of this title should be subject to any alteration in order to establish a systematic approach for the provision of modern and effective maritime telecommunications systems.

***332** [(b) The Commission shall transmit a report to the Congress not later than 12 months after the effective date of this title relating to the study of public maritime coast station services conducted under subsection (a). Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

[STUDY OF RADIO NAVIGATION SYSTEMS

[Sec. 507. (a) The President, in conjunction with Government agencies which will or may be affected by the development of a Government-wide radio navigation plan, shall conduct a study of all Government radio navigation systems to determine the most effective manner of reducing the proliferation and overlap of such systems. The objective of such study shall be the development of such a plan.

[(b) The President shall transmit a report to the Congress no later than 12 months after the effective date of this title relating to the study conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the President related to such findings and conclusions, and any recommendations of the President for such legislation or other action as the President considers necessary or appropriate for implementation of a Government-wide radio navigation plan.]

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DEFINITIONS

Sec. [508.] 505. For purposes of this title–

(1) the term "person" includes an individual, partnership, association, joint stock company, trust, or corporation;

* * * * * * *

SECTION 1253 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1981

[UNIFORM SYSTEM OF ACCOUNTS

[Sec. 1253. (a)(1) The Federal Communications Commission (hereinafter in this section referred to as the "Commission") shall complete the rulemaking proceeding relating to the revision of the uniform system of accounts used by telephone companies (Common Carriers Docket 78–196; notice of proposed rulemaking adopted June 28, 1978, 43 Federal Register 33560) as soon as practicable after the date of the enactment of this Act.

[(2) Such uniform system shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which are developed, manufactured, or offered by such common carrier.

***333** [(b) The Commission shall submit a report to each House of the Congress not later than one year after the date of the enactment of this Act. Such report shall include a summary of actions taken by the Commission in connection with the rulemaking proceeding specified in subsection (a), together with such other information as the Commission considers appropriate.]

SECTION 6101 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) Annual Assessment.–

(1) * * *

* * * * * * *

(3) Last assessment of annual charges.–The last assessment of annual charges under subsection (c) shall be made not later than [September 30, 1995] September 30, 1998.

* * * * * * *

NOTE REGARDING SUBTITLES A AND B

No Ramseyer had been provided by the Office of Legislative Counsel for Subtitles A and B of Title V at the time this report was transmitted to the Budget Committee.

****607*334** DISSENTING VIEWS ON MEDICAID DISPROPORTIONATE SHARE PROVISIONS

[CHAPTER 1 OF SUBTITLE B OF TITLE V–COMMITTEE ON ENERGY AND COMMERCE]

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Included in the Medicaid reconciliation legislation are provisions which would limit payment adjustments to State or locally-owned or operated disproportionate share hospitals (DSH hospitals) to the costs that these facilities incur in providing services to Medicaid-eligible and uninsured patients. States are currently required to make these payment adjustments for inpatient hospital services provided to hospitals which serve a disproportionate number of Medicaid and other low-income patients. Prior to 1991, the Secretary of Health and Human Services (HHS) was prohibited by law from limiting States' payment adjustments to disproportionate share hospitals. Because these payment adjustments to DSH hospitals rose very sharply in the past few years, the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments were passed in 1991 (P.L. 102–234) which limited national aggregate disproportionate share payment adjustments to 12 percent of total Medicaid spending on an annual basis.

Recent reports in the Washington Post have said that some States have used disproportionate share payments as a way to fund road projects, build prisons, operate the court system, and balance State budgets. We want to state categorically these types of gross abuses should be immediately ended. Under no circumstances should Federal Medicaid dollars be used for such purposes.

Nevertheless, we must strongly object to a legislative process (or should we say lack of legislative process) that has been followed in preparing these provisions. These provisions were first made available to Committee Members only a few business days before the Subcommittee markup. Prior to their introduction in the reconciliation ****608** legislation, there were no consultation or discussions with Members of this Committee, the National Governors' Association, the American Public Welfare Association representing State Medicaid Directors, or the National Association of Public Hospitals. Additionally, the Subcommittee on Health and the Environment has had no hearings on this issue this year. We find it extraordinary that legislation that will have such a severely adverse impact on many States was drafted without public scrutiny. And we must emphasize that the Congressional Budget Office (CBO) estimates that these provisions will cost the States $2.25 billion in Federal payments over the next 5 years.

Let us contrast the current situation with the legislative process that took place in 1991 when we first turned attention to placing limits on disproportionate share payments to hospitals (P.L. 102–234). During that debate, we had three full days of hearings on the ***335** subject before the Subcommittee on Health and the Environment. The Subcommittee compiled approximately 500 pages of testimony (e.g., State Financing of Medicaid (Serial No. 102–79)), and took over 10 hours of testimony from the Administrator of the Health Care Financing Administration (HCFA). Then there were extended discussions over a period of months between Congress, the National Governors' Association, and the Bush Administration that led to the comprise which became the basis for P.L. 102–234. Drafts of the proposed legislation were circulated widely so that the States and the public could participate as informed partners with Congress and the Administration.

Again we must emphasize that the first draft of the current provisions appeared just a little over two weeks ago. Since then, the legislative language has been changed twice. Although the changes were relatively minor, they have caused wild fluctuations in the CBO scoring of these provisions. At first, the provisions were scored by CBO as saving $5 billion over five years. Then they were scored by CBO as saving no money. Then the final version, as passed, was scored as saving $2.25 billion. Moreover, actual estimates made by public hospitals in just four States show that these States would lose $653 million in the first year. This figure is approximately $353 million more than the first year CBO estimate of the impact of these provisions on the entire nation. We believe that both the dramatic fluctuations in CBO estimates, and the actual public hospital estimates from just a few States show that Congress has no idea of the real impact of this legislation on States.

Under extraordinary time pressure, representatives of our nations' public hospitals have attempted to estimate the adverse impact of these provisions on some of our nations' largest public hospitals. These are all hospitals that are using DSH payments to provide basic health care to our nations' poor and not to build roads or sports stadiums. Listed below are the amounts of payments some selected hospitals would lose under this legislation. This list is by no means inclusive of all hospitals likely to be impacted by this legislation, but represents estimates by a small sample of hospitals that were able to provide financial estimates. These early estimates show that some hospital and States would lose hundreds of millions of dollars. The fiscal effects could be devastating and ****609** could lead to hospital closures with the true victims being the nations' poor and uninsured.

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***336** In addition to these estimates, the Georgia Hospital Association estimates that Georgia would lose $28 million in DSH

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payments because of State regulations which require all DSH hospitals to contribute 15 percent of their DSH payments to the States' Indigent Care Trust Fund which expands access to primary care services to the poor.

These examples are just a selected sampling of the devastating impact this legislation can have on our nations' public hospitals. We strongly believe that as this legislation moves forward, Congress, the States, and the Public Hospital Community should join in an intensive analysis and debate of the impact of this legislation. At this point, the substantive analysis and debate has not even begun.

Carlos J. Moorhead.
Thomas J. Bliley, Jr.
Jack Fields.
Michael Bilirakis.
Joe Barton.
J. Dennis Hastert.
Cliff Stearns.
Bill Paxon.
Paul Gillmor.
Scott Klug.
Michael D. Crapo.
James Greenwood.
Billy Tauzin.

****610*337** DISSENTING VIEWS ON CHILDHOOD IMMUNIZATIONS

[CHAPTER 2 OF SUBTITLE B OF TITLE V–COMMITTEE ON ENERGY AND COMMERCE]

The provisions reported by the Committee on Energy and Commerce relating to childhood immunizations represent an ill-conceived spending program that will do very little to solve our nation's serious immunization problem among preschoolers. While this proposal represents an improvement over the Administration's previous approach which would have nationalized the nation's vaccine supply, it still contains many of the same flaws.

The centerpiece of the Clinton administration's original proposal would have established a new $4.7 billion entitlement program for the purchase of all childhood vaccines used in the United States. Under this program, the Secretary of Health and Human Services (HHS) would have established a universal purchase system whereby the Secretary would purchase all vaccines needed for children in the United States.

While the much touted "compromise" that was negotiated between the Committee Democrats and the Administration is advertised as eliminating universal purchase and free vaccines for the affluent, this is not the case. The compromise attempts to limit the population eligible for this new entitlement program by restricting coverage to: (1) Medicaid recipients; (2) uninsured children; and (3) insured children who lack first dollar coverage for immunizations.

However, it should be noted that Congressional Budget Office (CBO) estimates indicate that out of all the children (ages 0 to 5) who would be eligible for free vaccines under this bill:

6.5 million are children who already receive free vaccines under the Medicaid program, (at the shared expense of State and Federal governments; this proposal would shift 100% of the costs to the Federal government);

4.2 million children are covered by health insurance policies that do not provide first dollar immunization coverage and are at, or above, 200% of poverty ($29,000 in 1993);

2.2 million children are currently receiving free vaccines in public health clinics; and

400,000 children have no insurance, are from families with incomes below 200% of poverty, and are not currently receiving free vaccines from the Federal government.

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Thus, CBO estimates indicate that the new estimated $2.1 billion 5 year cost of the bill would be used to purchase vaccines for a very large portion of children who are from families above 200% of poverty or who are already covered for immunization by the Medicaid program or through public health clinics.

In addition, the Administration proposal sets up an elaborate Star Wars tracking system designed to monitor the immunization ***338** status of every child in America, despite the fact that millions of families and pediatricians keep complete and accurate records.

****611** In our view, the Administration bill does little to resolve the root causes of low immunization rates which have been well documented:

(1) a health care system that is not "user friendly" by placing obstacles in the way of parents seeking to immunize their children. For example, long clinic waits, long waits for appointments, inconvenient clinic hours, difficult to reach clinic locations, making children come back for vaccines instead of giving them all simultaneously, unnecessarily not vaccinating children with minor illnesses and not taking advantage of the contacts many high risk children already have with public assistance programs all contribute to making immunization difficult; and

(2) lack of parental knowledge of the importance of preschool immunization and–in some cases–lack of parental interest in immunizing their children.

Finally, we must mention the very novel funding system that will pay for this program. Savings from the Medicare program of $2.1 billion are going to be used to finance this program on a temporary basis until the Clinton Administration identifies the funding source. This unique financing system does not speak well of the Clinton Administration's commitment to fiscal responsibility.

To address the true causes of low immunization rates, Congressman Klug and Greenwood offered a substitute amendment that would:

(1) reauthorize the current program of discretionary State grants that permits the Secretary to purchase and distribute vaccines and to fund activities to promote immunization at the level of $290 million for each of Fiscal Years 1994 through 1996;

(2) establish a new formula grant program to the States for the purpose of purchasing vaccines and providing them free of charge to uninsured children. This program is authorized at $100 million for FY 1994 and such sums as necessary for Fiscal Years 1995 through 1996. An uninsured child is defined as an individual 18 years of age or younger who has no health insurance;

(3) establish a new grant program to the State for the purposes of monitoring and tracking the immunization status of children at significant risk and uninsured children at the levels of $50 million for FY 1994 and such sums as necessary for each of FY 1995 and FY 1996. In FY 1993, States would be required to conduct a county-by-county survey to determine the number of children in each country who are uninsured and who have not been immunized. Children at significant risk are defined as those who reside in a county where a significant number of children have not been immunized; and

(4) authorized grants to public and non-profit private entities for the purpose of carrying out demonstration projects to develop innovative methods to encourage parents to have their children immunized. This program is authorized at $50 million ****612*339** for FY 1994 and such sums as necessary for each of Fiscal Years 1995 and 1996.

Clearly, if the intention of this vaccine initiative is to remove barriers to immunization, then, in our view, the Klug-Greenwood Amendment properly addresses that issue. The amendment removes the financial barrier for those whom it is actually a barrier–children who are truly uninsured and whose families cannot afford to have their children immunized. Through the targeted tracking program and the demonstration project, the Klug-Greenwood Amendment also addresses other barriers such as lack of knowledge on the part of parents of the need for immunizations, and inconvenient clinic locations and hours.

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Buying vaccines for families that can afford it is not the way to increase our immunization rates. We need to target the kids who are currently not in the system by focusing our efforts on increasing their immunization rates through programs which will encourage parental responsibility and involvement. We should make sure that families have access to vaccines and, at the same time, we should also make sure that parents understand it is their responsibility to have their children immunized.

Carlos J. Moorhead.
Thomas J. Bliley, Jr.
Jack Fields.
Michael Bilirakis.
Dan Schaefer.
Joe Barton.
Alex McMillan.
J. Dennis Hastert.
Cliff Stearns.
Bill Paxon.
Scott Klug.
Gary A. Franks.
James Greenwood.
Michael D. Crapo.

***341** TITLE VI–COMMITTEE ON FOREIGN AFFAIRS

Committee on Foreign Affairs,
House of Representatives,
Washington, DC, May 13, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget, O'Neill House Office Building, Washington, DC.

Dear Mr. Chairman: We are writing on behalf of the Committee on Foreign Affairs in response to the reconciliation instructions set forth in section 7(c)(6) of the conference report to accompany H.Con.Res. 64, the concurrent resolution on the budget for fiscal year 1994.

On Wednesday, May 12, 1993, the committee met in open session to consider the reconciliation instructions applicable to the committee's jurisdiction. The committee agreed to endorse the legislative proposal which is included in the Committee on Post Office and Civil Service's reconciliation recommendations.

****613** Specifically, the legislation recommended by the Committee on Post Office and Civil Service would reduce direct spending for civilian government retirement systems, including the Foreign Service Retirement and Disability Fund (FSRDF) and the Foreign Service Pension System (FSPS), by requiring a three-month delay in cost-of-living adjustments (COLAs) in each of the fiscal years 1994, 1995, and 1996.

According to the Congressional Budget Office cost estimate, such legislation, if enacted, would reduce outlays from the FSRDF and FSPS by $3 million in each of the above fiscal years for a total savings of $9 million over the three-year period. Such reductions would exceed the minimum amounts required under section 7(c)(6) of the conference report to accompany H.Con.Res. 64.

In view of the fact that the Committees on Foreign Affairs and on Post Office and Civil Service have joint jurisdiction over the FSRDF and the FSPS, both committees will be credited with the savings effected by the proposed legislation pursuant to the guidelines issued by the Committee on the Budget.

The Committee on Foreign Affairs endorses the action taken by the Committee on Post Office and Civil Service without prejudice to its jurisdiction over the FSRDF and FSPS. In the event that the Senate treatment of these COLAs is different than the House treatment, the Committee on Foreign Affairs would request representation on the conference committee.

***342** We also respectfully request that this letter be included in the legislative report to accompany the omnibus

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reconciliation bill.

Thank you for your consideration.

With best wishes.

Sincerely,

Benjamin A. Gilman, Ranking Minority Member.
Lee H. Hamilton, Chairman.

***343** TITLE VII–COMMITTEE ON JUDICIARY

House of Representatives,
Committee on the Judiciary,
Washington, DC, May 12, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.
Dear Mr. Chairman: Pursuant to the reconciliation instructions contained in the conference agreement on the budget resolution for Fiscal Year 1994, I am pleased to transmit legislation to reduce direct spending for programs within jurisdiction of the committee on the Judiciary. A Committee Print of the proposed legislation is attached.

****614** The conference report instructs the Committee on the Judiciary to submit legislation to reduce direct spending for programs within its jurisdiction by $345 million over the five year period. The Committee Print provides for an extension of the patent fee surcharge through Fiscal Year 1998. The amounts directed to be collected through the surcharge are $111,000,000 in Fiscal Year 1996; $115,000,000 in Fiscal Year 1997; and $119,000,000 in Fiscal Year 1998. These amounts total the $345 million savings required under the reconciliation instructions.

I hope that this proposal will be of assistance to your Committee in meeting the reconciliation targets.

With every good wish, I am

Sincerely,

Jack Brooks,
Chairman.

Enclosure.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. Jack Brooks,
Chairman Committee on the Judiciary, House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation recommendations of the House Committee on the Judiciary, as ordered reported by the Subcommittee on Intellectual Property and Judicial Administration on May 5, 1993.

***344** If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

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2. Bill title: Reconciliation Recommendations of the House Committee on the Judiciary.

3. Bill status: Ordered reported by the Subcommittee on Intellectual Properties and Judicial Administration on May 5, 1993.

4. Bill purpose: Title VII would extend through 1998 the surcharge on patent fees that was enacted in the Omnibus Budget Reconciliation Act of 1990. The 1990 act instructed the Commissioner of Patents and Trademarks to levy a surcharge on patent fees and to adjust them so as to collect amounts specified in the act. The surcharge receipts would continue to be deposited in a special fund in the U.S. Treasury as offsetting receipts, and would be available to the Patent and Trademark Office only to the extent provided in advance in appropriation acts.

****615** 5. Estimated cost to the Federal Government:

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The budgetary impact of this bill falls within budget function 370.

Basis of estimate: The bill specifies that the surcharges should be revised periodically by the Commissioner of Patents and Trademarks so as to ensure that the amounts collected are $111 million in 1996, $115 million in 1997, and $119 million in 1998. This estimate assumes that those targets are attained.

6. Estimated cost to State and local governments: None.

7. Estimate comparision: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: John Webb.

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

***345** TITLE VIII–COMMITTEE ON MERCHANT MARINE AND FISHERIES

House of Representatives,
Committee on Merchant Marine and Fisheries,
Washington, DC, May 14, 1993.

Hon. Martin O. Sabo,
Chairman, Committee on the Budget, House of Representatives, O'Neill House Office Building, Washington, DC.
Dear Mr. Chairman: I am transmitting herewith the recommendations of the Committee on Merchant Marine and Fisheries to comply with the reconciliation instructions contained in H. Con. Res. 64, the Concurrent Budget Resolution for Fiscal Year 1994.

Our Committee was instructed to report legislation to reduce direct spending for programs within our jurisdiction by $205 million over the five-year period, Fiscal Years 1994–1998. The reconciliation savings in this package are achieved by extending tonnage duties through Fiscal Year 1998.

The Committee recommendations also include a Sense of the Congress Resolution that the Inland Waterways Fuel Tax should not be further increased beyond those increases already mandated by law.

These recommendations were approved and ordered reported by voice vote by the Full Committee on May 12, 1993.

I have been advised by the Congressional Budget Office (CBO) that these recommendations fulfill the reconciliation instructions to the Committee on Merchant Marine and Fisheries.

Finally, the Congressional Budget Office is preparing the cost savings estimate that will be sent to you under separate cover.

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****616** With kind regards.

Sincerely,

Gerry E. Studds,
Chairman.

Enclosures.

SECTION-BY-SECTION ANALYSIS

SECTION 8001. TONNAGE DUTIES

The United States imposes a tonnage duty on a vessel which enters the U.S. from any foreign port or place; the duty is also imposed on a vessel which departs from and returns to a U.S. port or place on a "voyage to nowhere".

The tonnage duty is imposed on the cargo-carrying capacity of the vessel. In this respect, it differs from customs duties, which are imposed on the actual cargo, and from the Harbor Maintenance Tax, an ad valorem tax imposed against the value of the cargo. ***346** Consequently, the tonnage duty is assessed regardless of whether the vessel is empty or is carrying cargo.

Under current law, a vessel arriving from a foreign port in the northern Western Hemisphere (Canada, Mexico, Central America, the West Indies, and northern South America) and a vessel returning from a "voyage to nowhere" must pay a tonnage duty of nine cents per ton. However, the maximum payment for any vessel in a single year is 45 cents per ton.

A vessel arriving from a foreign port anywhere else in the world must pay a tonnage duty of 27 cents per ton, not to exceed $1.35 per ton in a single year.

These current tonnage duties were first imposed in fiscal year 1991. They are scheduled to remain in effect through fiscal year 1995. Under current law, in fiscal year 1996 the tonnage duties will revert to earlier, lesser amounts (two cents per ton, not to exceed ten cents per ton in a single year for vessels entering from the northern Western Hemisphere and from "voyages to nowhere;" six cents per ton, not to exceed 30 cents per ton for other vessels subject to the duty).

Congress imposed the current higher tonnage duties in section 10402(a) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990. The Committee on Merchant Marine and Fisheries initiated the tonnage duty amendment to comply with its reconciliation instructions. Before this time, tonnage duties had not been increased since 1909.

Section 8001 amends section 36 of the Act of August 5, 1909, and the Act of March 8, 1910, to maintain the tonnage duties at current levels through fiscal year 1998. Based on analysis by the Congressional Budget Office, the Committee estimates that this will raise $67 million in fiscal 1996, $68 million in fiscal 1997, and $70 million in fiscal 1998. Section 8001 also makes related technical corrections in relevant statutes.

****617** SECTION 8002. SENSE OF CONGRESS ON INCREASES IN INLAND WATERWAYS FUEL TAXES.

This section contains a Sense of the Congress Resolution which expresses the Committee's intention that the inland waterways fuel tax should not be further increased beyond those increases already mandated by law.

The inland waterways fuel tax is a tax paid by commercial cargo vessel operators on the inland waterway system and the intracoastal waterway. Receipts from this tax are transferred to the Inland Waterways Trust Fund. Barge operators on these inland waterways currently pay a tax of 17 cents per gallon. Under current law this amount will increase to 19 cents per gallon in fiscal year 1994 and to 20 cents in 1995 and thereafter. In addition, these barge operators pay a one-cent-per-gallon tax on the same fuel for the Leaking Underground Storage Tank Trust Fund.

Barges currently carry approximately 15 percent of all of the Nation's freight and provide 180,000 jobs. Shipping by barge is an energy-efficient, safe, and competitive method of shipping.

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The increase in the fuel tax, according to the President's budget submission, will cost barge operators $420 million, more than their ***347** pre-tax profits. The budget submission calls for the fuel tax to increase to $1.19 by fiscal year 1997, a 515-percent increase.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. Gerry E. Studds,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation recommendations of the House Committee on Merchant Marine and Fisheries.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Reconciliation Recommendations of the House Committee on Merchant Marine and Fisheries.

3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries on May 12, 1993.

4. Bill purpose: This title would extend through fiscal year 1998 the increase in vessel tonnage duties that was enacted in the Omnibus Budget Reconciliation Act of 1990. The 1990 act increased per-ton duties from $0.02 to $0.09 (up to a maximum of $0.45 per ton per year) on vessels entering the United States from western ****618** hemisphere foreign ports and from $0.06 to $0.27 (up to a maximum of $1.35 per ton per year) on those from other foreign ports. The additional amounts collected would continue to be deposited to the general fund of the U.S. Treasury as offsetting receipts and ascribed to U.S. Coast Guard activities.

5. Estimated cost to the Federal Government:

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The budgetary impact of this bill falls within budget function 400.

Basic of estimate: This estimate is based on current projections for vessel tonnage duties through 1995, adjusted for expected growth in ocean shipping volumes in subsequent years.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

***348** CHANGES IN EXISTING LAW MADE BY TITLE VIII OF THE BILL, AS REPORTED

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In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 36 OF THE ACT OF AUGUST 5, 1909

AN ACT To provide revenue, equalize duties and encourage the industries of the United States, and for other purposes

Sec. 36. That a tonnage duty of 9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, [and 1995,] 1995, 1996, 1997, and 1998, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46, United States Code) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or [place,] place and a duty of 27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991, 1992, 1993, 1994, [and 1995,] 1995, 1996, 1997, and 1998, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign [port, not, however, to include vessels in distress or not engaged in trade] port. However, neither duty shall be imposed on vessels in distress or not engaged in trade.

* * * * * * *

ACT OF MARCH 8, 1910

AN ACT Concerning tonnage duties on vessels entering otherwise than by sea

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That vessels entering otherwise than by sea from a foreign port at which tonnage or light-house dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 9 cents per ton, not to exceed in the aggreagate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, [and 1995,] 1995, 1996, 1997, and 1998, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter, prescribed by section thirty-six of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes."

***349** SECTION 10402 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 10402. TONNAGE DUTIES.

(a) Vessels Entering From Foreign Port or Place.–Section 36 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", approved August 5, 1909, (36 Stat. 111; 46 App. U.S.C. 121) is amended [in the second paragraph]–

(1) ***

* * * * * * *

***351** TITLE IX–COMMITTEE ON NATURAL RESOURCES

House of Representatives,

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Committee on Natural Resources,
Washington, DC, May 13, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
O'Neill House Office Building, Washington, DC.

Dear Mr. Chairman: On May 12, 1993, the Committee on Natural Resources favorably reported its recommendations on Title IX of the Budget Reconciliation for fiscal year 1994 to the Committee on the Budget. Enclosed is a copy of the Committee's legislative language and the report language to accompany it.

Sincerely,

George Miller, Chairman.

BACKGROUND AND NEED

SECTION 9001. ANNUAL DIRECT GRANT ASSISTANCE

Introduction.–Section 701 of the Covenant which established the Northern Mariana Islands (N.M.I.) as a commonwealth in political union with the United States pledged Federal assistance to the N.M.I. to achieve a higher standard of living for its people and to develop the economic resources needed to meet the financial responsibilities of local self-government. Section 702 of the Covenant ****619** committed the Federal Government to provide the commonwealth with $192.5 million for this purpose on a guaranteed basis for an initial period which was to last between fiscal years 1978 and 1985. Section 902 required representatives of the President and the Governor of the N.M.I. to make recommendations regarding further multi-year assistance after fiscal year 1985.

Current Commitment.–In 1985, representatives of the President and the Governor recommended assistance totalling $228 million from fiscal years 1986 to 1992. The law that approved the assistance also requires the continued annual payment of the fiscal year 1992 amount ($27,720,000) until another law on the subject is enacted.

New Commitment Recommendations.–In the closing weeks of the Bush Administration, representatives of the President and the Governor recommended that current law be replaced with a package of $120 million in special Federal assistance for infrastructure over the next seven years. This recommendation was incorporated in the President's fiscal year 1994 budget submission.

By any measure, the standard of living of the people of the N.M.I. has increased tremendously since the initial commitment was made. Further, the economy of the commonwealth–which had almost no private sector when the Covenant was approved–has developed ***352** to the point that it can generate revenue to meet many local government costs. For example, gross business revenue more than tripled from 1987 to 1992. There are similarly impressive indicators of increases in personal income.

The Committee believes that the $448.2 million provided to date (which does not include assistance like that generally provided all U.S. insular areas) has satisfied the U.S. pledge to improve the standard of living and economic resources of the N.M.I.

The fact that an additional commitment was recommended by representatives of the President and the Governor does not obligate the Congress to grant special assistance beyond that required by section 702 of the Covenant. In 1985, for example, the Congress did not approve all of the recommendations made by the representatives.

The Committee is unwilling to provide the recommended assistance so long as the N.M.I. maintains current policies in areas which the Committee has identified as needing improvement. The Committee strongly believes, for example, that further special assistance to the commonwealth should not be committed while the local revenue effort remains inadequate.

Tax System.–The primary responsibility for meeting infrastructure needs in the N.M.I. belongs to the N.M.I. government. A key aspect in evaluating whether this responsibility is being met involves the Commonwealth's income tax system. Although the Covenant provided that the N.M.I., like Guam, would use the Federal tax code as a local income tax, it does not. Instead,

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the Commonwealth has rebated Federal rate collections on local source income and other taxes. The system rebated approximately $49 million to taxpayers in 1991 alone and some $122 million from 1986 to 1990.

****620** The N.M.I. has substituted a system that taxes higher wage-earners, businesses, and investments less than Federal rates would and lower wage earners more. The disparity between the Federal rate liability and the actual tax liability of individuals under the N.M.I. system increases with income levels. Moreover, the N.M.I. is losing millions of dollars every year because of loopholes in the system that enable foreign investors to repatriate profits without paying taxes. Federal tax authorities also have noted a lack of local cooperation in dealing with tax avoidance concerns.

Utility Rates.–The Committee also has been concerned about the failure of the N.M.I. to charge, bill, and collect adequate utility rates. The Committee understands that the islands have not yet fulfilled utility rate obligations undertaken in an agreement with the Interior Department's Territorial and International Affairs Office in connection with the assistance provided for fiscal years 1986 through 1992. As a result, the N.M.I. does not have access to some $27 million in interest earnings on that assistance. Fulfillment of this commitment should precede additional Federal assistance.

Alien Labor System.–The Commonwealth's virtually unrestricted development policy is, in large part, dependant upon its current immigration system. The Covenant provides that the N.M.I. will control immigration unless the Federal Government extends immigration laws to the islands. The N.M.I. has used its immigration authority to develop a social and economic system reliant on cheap, foreign labor. To prevent the local population from being overwhelmed ***353** by aliens, the N.M.I system classifies workers as temporary–even though they can remain in the islands for many years and very often occupy permanent jobs. The N.M.I. also prevents all but the small number of aliens at upper income levels from bringing their families with them to the N.M.I. This immigration policy has overwhelmed the medical and educational systems and significantly increased the need for infrastructure. Thus far, the N.M.I. has been unwilling to fairly make the difficult choices between growth and admitting outsiders into their community, opting instead for additional U.S. assistance.

The islands' alien labor system also has resulted in numerous and serious cases of abuse and poor treatment of workers, including personal abuse, poor living conditions, and failure to pay even the low wages due.

Minimum Wage.–Like immigration, the N.M.I. controls minimum wage rates under the Covenant unless the Federal Government extends the minimum wage law. The N.M.I. has used its minimum wage authority to establish minimum wage rates far below prevailing wages and living costs. Further, the rate does not apply to many jobs held by aliens such as those in the construction industry and as domestic help. The Committee believes that the N.M.I. must reconsider the low wage rates in view of the high cost of living in the islands before receiving additional U.S. assistance.

Garment Industry.–The Committee also is concerned that the N.M.I.'s alien labor system has been used to establish a garment manufacturing industry that unfairly competes with other clothing producers under the U.S. flag. This industry combines the advantage of cheap foreign labor with another Covenant advantage which ****621** permits products of the islands to enter the U.S. market freely although the islands are outside of the customs territory of the U.S. Use of this provision is of particular concern to the Committee since it was intended to create employment for the residents of the U.S. insular areas outside of U.S. customs territory, and not for alien workers in such areas.

Use of Past Assistance.–Federal auditors have reported that significant amounts of past funding have been used inefficiently or for ineligible purposes. These abuses have depleted the funds available to meet the Commonwealth's needs. The Interior Department Inspector General contends that the government of the N.M.I. has failed to take corrective actions that have been recommended and, in some cases, that the N.M.I. has agreed to take. The Committee understands that local officials have fully resolved only one of some three dozen corrective measures recommended in recent years. Committee Members are concerned about providing further special assistance in light of audit findings and the insular government's failure to act on audit recommendations.

Other Insular Needs.–The Committee also believes that the recommendations must be considered in the context of the assistance provided other insular areas. All have inadequate infrastructure; but none receives the level of special assistance that the N.M.I. does.

The $27.7 million provided for capital improvements in the N.M.I. this year, for example, compares with $6.1 million

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appropriated for special projects in Samoa and $3.8 million for projects ***354** in Palau. Further, American Samoa and Palau have less of an economic base to draw on for local financing of needs.

The case of Samoa is the most relevant because the last administration failed to agree to the Committee's suggestion of a multi-year assistance commitment to that territory. Additionally, Samoa has greater basic infrastructure needs than the N.M.I. and uses U.S. rate income taxes.

The Committee has been told that the water source which provides 77 percent of Samoa's water is being contaminated because there are insufficient funds to expand the sanitary sewage system. Also, a reported one-third of Samoa's residents get their fresh water from untreated catchments and streams which routinely fail safe drinking water inspections.

The Committee also notes that American Samoa's main medical facility is in such a state of disrepair that it leaks in the rain and that patients sometimes have to bring their own beds to use in the hospital.

Committee Alternative.–In considering the issues described above, the Committee could not agree to extending special assistance to the N.M.I. at this time. Although the Committee recognizes that the Commonwealth has begun to address many of the issues of concern, the Committee cannot support further special assistance based on the actions taken to date. The Committee recognizes that the Commonwealth has substantial needs that it may not be able to meet on its own, including the need to fund the National park to honor those who lost their lives in the World War Two battle for the Marianas. The Committee believes a fitting monument ****622** to this sacrifice should be constructed prior to the fiftieth anniversary of the battle in 1994 next year. This funding should be made available as soon as possible. Further, the possibility of future special assistance to the Commonwealth should be preserved to the extent possible. The Committee intends to reconsider assistance if the N.M.I. addresses the policy concerns and pledges its good faith in doing so.

SECTION 9002. NET RECEIPTS SHARING

Since 1991, Congress has placed language in the Interior Appropriations bills directing the Minerals Management Service (MMS) to deduct 50 percent of the cost of administering the mineral programs before distribution of receipts to the States and the Federal Treasury. The effect of the language is to fix the States' share in paying for the costs of collecting and disbursing the mineral receipts at 25 percent.

The calculation of program administrative costs is based on revenues generated within each State. MMS spreads a certain percentage of the costs among states with leasing activity, but also allocates more costs to the more significant efforts necessary to provide supervision of operations and royalty accounting for leases with higher production and revenue levels. The estimated distribution to each State is based on the percentage of total mineral leasing revenues historically generated within each State. On a monthly basis, MMS withholds an equal portion of the cost recovery amount. Each State's monthly withholding is based on that State's prior month's cumulative fiscal year disbursements.

***355** SECTION 9003. HARD ROCK MINING CLAIM MAINTENANCE FEE

The Mining Law of 1872 requires claim holders to perform annually $100 worth of development related work on their claims (known as assessment work). The requirement is intended to encourage development of mineral resources. Each year claim holders are required to file an affidavit attesting that this work has been done. Neither Bureau of Land Management (BLM) nor the Forest Service is capable of verifying the over 600,000 affidavits covering multiple claims on about 45 million acres filed each year. In fact, a March 1989 GAO report asserts that claimants are holding many unpatented claims without fulfilling the annual work requirement (GAO/RCED–89–72). Instead of mining, GAO found that some claimants were holding the claims in anticipation that future mineral price increases would make such claims profitable to mine. The GAO also stated:

> While the mining community generally recognizes that many claim holders certify that they have met the annual requirement without ever performing the work, it would be difficult to differentiate between work certified but not done and work done that cannot be verified. For example, activities such as conducting geological, geochemical, and geophysical surveys often leave little or no physical evidence that work was performed or conditions improved in a given

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year.

****623** Failure to fulfill the annual work requirement is grounds for BLM to invalidate a claim. However, it takes time and money to invalidate a claim, a process that may require the BLM to perform a mineral examination to determine whether the mineral can be mined economically, and to defend its determination in court. Even if BLM is successful in invalidating a claim, the claim holder can immediately refile another claim on the same location, thus regaining the right to extract and sell minerals.

Further, according to the BLM's Fiscal Year 1993 Budget Justification:

The annual assessment work represented a significant amount of activity and expenditure when it was originally enacted in 1872. However, in today's dollars $100 worth of work has little significance as an indicator of commitment to develop and maintain a mining claim. In addition, questions have been raised about the enforceability of the assessment work requirement.

According to the Bureau of Land Management, there are approximately 970,000 hard rock mining claims on public lands operating under the 1872 Mining Law. Hard rock minerals include gold, silver, lead, copper, zinc and numerous other minerals. The 1872 law requires claimants to perform annually $100 worth of work to develop and maintain their claims. Claimants pay only a $15 filing fee to the Federal Government for the right to mine on public lands.

***356** SECTION 9004. FEDERAL IRRIGATION WATER SURCHARGE

The Federal reclamation program has been operating for over 90 years. Hundreds of water projects have been built by the Bureau of Reclamation in the 17 Western states. Some Reclamation project service areas are also served by storage facilities constructed by the U.S. Army Corps of Engineers.

In most cases, these projects have for years successfully delivered millions of acre-feet of precious water, and have brought prosperity and economic stability to many states and communities. Many states, cities, farms, and industries have benefited from the largesse of the Federal reclamation program.

When the program first began, it was understood that a significant Federal financial investment would be needed to make construction of these complicated water projects possible. In recent years, however, we have learned that delivery of this water to desert lands and growing cities has also resulted in significant environmental costs as well. In some areas served by Bureau of Reclamation projects, irrigation practices and projects constructed for municipal and industrial uses have caused serious environmental side effects.

In many cases, especially with older Bureau of Reclamation projects, little or no consideration was given to fish and wildlife habitat impacts. Projects were often planned, designed, constructed, and operated without regard to resultant losses of habitat. ****624** Rivers were dammed, streams diverted, and wetlands drained, all with significant costs to fish and wildlife values. Section 9004 is designed to help correct at least some of the environmental losses that are associated with the construction and operation of Federal reclamation projects.

In recent years, substantial information has been developed regarding the current and expected environmental costs associated with the construction and operation of Federal reclamation projects. These data have been described in oversight reports of various committees of the House of Representatives and the Senate, the Comptroller General, the U.S. Fish and Wildlife Service, environmental organizations, the Office of the Inspector General, the Office of Management and Budget, the Environmental Protection Agency, and others. Further information has been developed at the state and local level by fish and wildlife agencies, water boards, state legislatures, and, in some cases, by water users themselves.

Historically, the general public, rather than project beneficiaries, has been responsible for repayment of most of these environmental costs. But because water developed by Federal Reclamation projects is in fact a public resource, and because many reclamation projects (especially older projects) make little or no provision for protection or restoration of environmental and fish and wildlife values, the Committee has determined that project beneficiaries should bear an increased share of the environmental costs as part of the cost of operating and maintaining the Federal projects from which they benefit.

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Incorporating these costs into the beneficiaries' annual operation and maintenance charges will not only internalize the environmental costs of operating the projects; it will also encourage ***357** reductions in water use and make more efficient use of Federal resources.

The Committee believes it is of critical importance to require beneficiaries of Federal reclamation projects to assist in funding fish and wildlife restoration activities through increased operation and maintenance charges. In 1982, Congress enacted the Central Valley Project (CVP) Improvement Act (Title 34, P.L. 102–575), which established substantial reforms along these lines for beneficiaries of the Central Valley Project. CVP users are exempted from this section, but the Committee believes that beneficiaries of Reclamation projects in other locations should contribute to the restoration of fish and wildlife habitat that has been affected by the projects from which they benefit.

The Committee recognizes that environmental and habitat restoration needs will not be the same for all projects. For example, some projects might require structural measures to restore habitat; others might require additional instream flows. In addition, some projects may require "mitigation" benefits, while others might require "enhancement". The Committee expects the Bureau of Reclamation, the Fish and Wildlife Service, and other Federal agencies to cooperate with other agencies at all levels of government to ensure that the fish and wildlife habitat restoration efforts agreed to and constructed under the authority of this section are appropriate ****625** and beneficial to the needs of fish and wildlife resources in the project area. Projects for both mitigation and enhancement may be considered, and operation and maintenance charges under this section should be assessed accordingly. Projects for the benefit of fish and wildlife and environmental resources in a specific project area or in a broader regional or watershed area may also be considered.

The Committee intends that monies appropriated under the authority of this section be designated for "on-the-ground" fish and wildlife habitat restoration activities projects and activities directly related to impacts resulting from the construction and operation of Federal reclamation projects. Funds authorized by this section should not be used for research or monitoring activities, except for those research and monitoring activities required to support major program activities authorized by this section.

SECTION 9005. COMMERCIAL AND RECREATION USER FEES

This section contains several changes in law and programs dealing with entrance, user and certain commercial fees for areas administered by agencies of the Department of the Interior, the Forest Service and the Army Corps of Engineers.

On February 17, 1993, the Clinton Administration presented its "Vision of Change for America" budget document to a Joint Session of Congress. This document proposed a variety of increased entrance and user fees for users of national parks, forests, and public lands for fiscal years 1994 through 1997. For the Department of the Interior, the document proposed increased entrance fees for units of the National Park System and U.S. Fish and Wildlife Service areas, new authority for the Bureau of Land Management to charge entrance fees, and increased fees for boat launching, campgrounds and other special use permits. For the Department of Agriculture, the document proposed new entrance fees for National ***358** Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas and areas of concentrated public use and increased user fees. For Army Corps of Engineers areas, the document proposed increased camping fees, the elimination of the one free camping site per campground and new charges for certain day use activities such as boat launching and swimming sites.

The Committee's recreation fee proposal differs in several important respects from the Administration proposal. First, it does not authorize increases in the caps for entrance fees at National Parks or authorize new entrance fees where none are charged now. It does not contain authorization for entrance fees at National Forest or Bureau of Land Management areas. It does not authorize a user fee for backcountry camping nor does it allow agencies to charge simply for the use of picnic tables. Furthermore, the Committee proposal contains several fees on commercial users of public lands which were not contained in the Administration's bill.

In drafting the Committee's fee proposal, consideration was given to the testimony of witnesses, long-standing policy concerns about recreation fees and the evolving context of other elements of the Administration's budget reconciliation proposal. Several factors went into the Committee's decision not to include the Administration's ****626** proposed increases in entrance fees to National Parks, National Forests and Bureau of Land Management areas. First, concern was expressed by

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witnesses and Members of the Committee that the Administration's fee proposal placed too large a burden on the park visitors who are already paying for the public lands through Federal tax dollars while ignoring commercial users who derive economic benefits from the use of national parks, forests and public lands. Fees on commercial operators such as park concessionaires, tour operators, private utility companies, communication tower owners and others were not included in the Administration proposal. Concern was expressed that some of the entrance fees proposed in the Administration's bill were too high and that they might have the effect of discouraging low income people from visiting parks and public lands. Concerns also were expressed that the Administration's entrance fee proposal was not comprehensive enough because it did not address the issues raised in the March 1993 Inspector General report on improved collection or the reasoning behind prohibitions on entrance fees at certain parks. Finally, the deletion of the hardrock mining royalty and grazing fee reform from the Administration's reconciliation package called into question the spirit of mutual sacrifice called for in the original "Vision of Change for America" document and made the imposition of steep entrance fee increases for national park, forest and public land visitors difficult to justify.

SECTION 9006. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

Under permanent law, the Nuclear Regulatory Commission (NRC) is directed to collect annual charges from its licensees that, when added to other amounts collected by the Commission (such as from the Nuclear Waste Fund for its activities in conjunction with review of the high-level radioactive waste management program), amount to 33 percent of the Commission's costs. Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99–272, S 7601.

***359** Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) increased the recovery requirement from 33 percent to 100 percent for fiscal years 1991 through 1995. Specifically, the NRC is required to recover approximately 100 percent of its budget authority from three sources: (1) amounts appropriated to the Commission from the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. S 10222(c); (2) fees for services rendered pursuant to the Independent Offices Appropriation Act of 1952, 31 U.S.C. S 9701; and (3) annual charges on licensees.

The Commission is directed further to establish by rule a schedule of charges "fairly and equitably allocating the aggregate amount of charges... among licensees." Such charges are to have "a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." Id., S 6101(c)(3).

Questions have been raised by both the Commission and others about the equity of some of the fees. For example, the fees on NRC licensees must be increased to cover certain NRC activities that do ****627** not relate to licensees, such as international assistance, and support for so-called "agreement states" that have taken over the regulation of materials licenses. Section 2903(c) of the Energy Policy Act of 1992 (P.L. 102–486) directed NRC to seek public comments on the need for changes to its fee policy. Pursuant to this requirement, the Commission recently issued a proposed rule, on which the comment period expires July 19, 1993.

In light of the Commission's ongoing review of its fee policy, the instant measure does not alter the fee structure established by the Omnibus Budget Reconciliation Act of 1990 (OBRA). The Committee expects to address the issue of fee equity in a future NRC authorization bill. This language simply changes the expiration date for the 100 percent recovery requirement in the OBRA of 1990 from September 30, 1995 to September 30, 1998.

SECTION 9007. RECOVERING THE COST FOR GOVERNMENT SERVICES

The Committee is concerned that the government is failing to receive reasonable fees for the provision of services as a result of bureaucratic disorganization and longstanding indifference to the cost of providing such services, often to commercial interests. The General Accounting Office (GAO) conducted a review of fees at the Department of the Interior (as well as at the Department of Commerce) at the request of Chairman George Miller and the then chairman of the House Budget Committee, former Representative Leon E. Panetta, in March, 1990. This report was the result of concern that the government frequently failed to collect fees or modify fees on a periodic basis.

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GAO found that the Departments did not possess detailed information needed to prepare a user fee compendium because each lacked a centralized system for developing, reviewing and collecting fees. As result, GAO was "unable to determine whether the departments are periodically adjusting their fees to compensate for inflation." The report "USER FEES: Limited Survey of User Fees at the Departments of Commerce and the Interior," GAO/AFMD–90–53FS, March, 1990) noted that from 1959 to 1974, Executive ***360** Branch departments were required to file an annual report with the Bureau of the Budget (now OMB) detailing the fees charged by each of their bureaus and organizational units. In April, 1974, however, the Nixon Administration discontinued this requirement "because most of the fee information *** was incomplete and inaccurate."

The potential loss of revenues to the Federal Treasury through the deficient collection of fees was estimated by the President's Council on Integrity and Efficiency to be between $476 million and $1.2 billion annually. Given the scope of the deficit, the Committee believes the Departments of Energy and the Interior must conduct a thorough review of services they provide and the adequacy of fees that are charged, to cover the costs of those services.

SECTION 9008: UNFUNDED LIABILITIES OF THE FEDERAL GOVERNMENT

This section requires the President's annual budget submission to include an estimate of potential unfunded liabilities of the Federal ****628** government related to environmental clean-up problems affecting lands or programs owned or regulated by the Federal government. Nothing in this discussion should be taken to establish existing liability or impose new liabilities on the Federal government where the existence of such liability is uncertain or currently the subject of litigation. Among the potential Federal liabilities that the Committee believes should be considered for inclusion in the President's budget submission are the following:

Active and Abandoned Mine Sites.–One of the largest environmental remediation costs on Federal lands will be cleaning up abandoned hardrock mining sites under the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Clean Water Act. The largest number of these sites are on Bureau of Land Management (BLM) lands, but clean-up costs also will be incurred at a significant number of mines in the National Forests, and some sites in Indian country. Since the Bureau of Indian Affairs (BIA) has not undertaken any systematic effort to assess the extent of mine site problems, no estimates are available for the potential extent of Federal liability on the lands within BIA's responsibility.

Since 1981, 26,000 plans of operations for hardrock mining have been filed with BLM. In addition, 6,808 notices are "active" for mines disturbing less than five acres–where no plan of operations is necessary. The Forest Service estimates approximately 2,200 active mine sites on the National Forests. Both BLM and the Forest Service report large numbers of abandoned mine sites, mostly unidentified, on Federal land. The Forest Service estimates there are 25,000 abandoned sites on National Forests; the BLM has not estimated the total on BLM lands, which might lie in the hundreds of thousands. To date sixty abandoned BLM mine sites are on the National Priorities List for Superfund cleanup under CERCLA. BLM has not estimated the total cost of cleaning up all abandoned mines.

BLM's Superfund liabilities, however, may be dwarfed by stormwater run-off control under the Clean Water Act, which applies to mine sites. BLM estimates it will cost $60 billion to identify ***361** and sample all mine sites on BLM land. This will be only the first step–it will then cost an unknown amount to trap and treat stormwater from the sites that are contaminating waters of the United States.

Although BIA has not inventoried mine sites on Indian trust lands, it estimates that the total clean-up costs for these sites might run in the $100 million range. In addition, funds will be devoted to a compensation fund for miners, many of them Navajo, who worked the uranium mines of the Southwest from 1947 to 1971. Further compensation may be made to Navajo families who unknowingly used mill tailings as construction materials on the Navajo Reservation.

Irrigation Drainage Areas.–The Department of the Interior has begun to remediate sites where drainage from federally-supported irrigation poses a substantial hazard to wildlife and the environment. The Department has identified 31 sites with potential contamination ****629** problems. However, several sites were eliminated because of a lack of data, or because the extent of Federal involvement was unclear.

Radioactive Materials.–Although Nuclear Regulatory Commission (NRC) licensees bear primary responsibility for the

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disposal of radioactive material, the government may face litigation demanding that it share in the significant liability for spent fuel storage costs if the Department of Energy does not provide a suitable storage site. In addition, the NRC and the states that have agreements with the NRC to take over the licensing of nuclear materials have issued some 26,000 materials licenses to institutions that handle radioactive material. The majority of materials licensees are required to assure decommissioning costs as part of the licensing process. The government pays decommissioning costs only where a Federal agency holds the license. In some cases, however, the Federal government has guaranteed these costs for its contractors. In 1990, these commitments totalled between $200 and $300 million.

Unexploded Ordnance.–Certain Federal lands have been used by the Department of Defense for training and testing military weapons, using live rounds. BLM estimates that some 50,000 acres of BLM lands are affected by unexploded ordnance. Unexploded ordnance is also present on approximately ten National Wildlife Refuges managed by the Fish and Wildlife Service. No technology yet exists to detect unexploded subsurface ordnance over a large area. As a result, BLM has been unable to identify the scope of the problem within affected lands and has no estimate of clean-up costs.

Uncapped Oil and Gas Leases.–BLM regulates oil and gas leases on all Federal lands–currently 93,483 wells. A November 1989 DOI Inspector General's report found that oil and gas lease operators were neither classifying wells correctly nor plugging them promptly upon closure. BLM estimates that the number of wells in need of Federal closure is now less than 1 percent of the total number of wells, but acknowledges that other unidentified unplugged wells may exist. In addition, the Forest Service is responsible for any clean-up costs from abandoned or improperly closed wells on its lands. Similarly, the Minerals Management Service (MMS) may face potential liability from improperly closed offshore wells.

***362** Issues Relating to Alaska Natives.–In the 1950's the Federal Government considered carrying out the "Project Chariot" scheme, which would use nuclear bombs to create a harbor in northwest Alaska. Although the bombs were not detonated, related activities left lands contaminated with nuclear materials. A Federal cleanup by the Department of Energy (DOE) is planned but the full scope of government liability has not been determined. The extent of government liability remains unknown with respect to Alaska lands that the Federal Government contaminated with asbestos and other hazardous wastes and later transferred to Alaska Natives.

Hazardous Waste Clean-up.–Apart from the hardrock mine sites discussed above, other sources of hazardous waste contamination on Federal lands are known to exist. Hazardous materials sites on Federal land range from leaking underground storage tanks to abandoned sheep dip vats on trust lands held for the Indian tribes ****630** to the handful of illegal drug laboratories found on BLM lands each month. The degree of Federal responsibility for cleaning up these various waste sites is uncertain and has lead to litigation in some cases. The cost for cleaning up each site does not reach the order of magnitude of the mine sites, but the number of potential environmental hazards may produce a substantial budget impact, nonetheless.

The Federal response to evaluating environmental liabilities to date has been piecemeal. Many agencies have started to compile inventories of polluted sites and estimates of remediation costs. Other agencies have taken an ostrich-like approach to the problem hoping it will vanish. Some agencies, such as the Bureau of Reclamation, have actually acquired sites with existing private liability for environmental hazards.

There are wide disparities in agency findings caused by the absence of consistent standards across the government. Until such standards exist, it will be impossible to set clean up priorities. Both standards and priorities must be incorporated into the budget process to achieve a more coherent approach to natural resource management and environmental cleanup.

SECTION-BY-SECTION

SECTION 9001. ANNUAL DIRECT GRANT ASSISTANCE

Section 9001 modifies the implementation of the Commonwealth of the Northern Mariana Islands Funding Agreement (N.M.I.) by making available for fiscal year 1994, $3 million for the American Memorial Park in the N.M.I., and directing that the remaining $19 million be held for capital improvements in the U.S. insular areas, subject to the approval of the Secretary of the Interior. It also sets conditions for year assistance for fiscal years 1995 through 2000.

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Subsection (a) repeals the P.L. 99–396 commitment of $27,720,000 per year in assistance to the Northern Mariana Islands (N.M.I.). Subsection (b) provides definitions for this section.

Subsection (c)(1) commits funding as follows: Paragraph (A) authorizes $3 million in fiscal year 1994 for the American Memorial Park in the N.M.I. The Park is intended to honor those who lost their lives in connection with World War Two fighting related to ***363** the Marianas. The funds could only be spent as authorized in P.L. 95–348.

The Committee does not want the funds to be used for more expansive plans for the park and hopes that they will be used prior to the fiftieth anniversary of the battle for the islands next year. It encourages the National Park Service to consult with the American Battle Monuments Commission concerning the use of the funds for the following primary purposes: (1) the erection of a proper monument to the American war dead to replace the present monument which the Committee feels is inadequate and (2) for appropriate park entrance gateways, boundary walls and related landscaping.

****631** Paragraph (B) authorizes $19 million in fiscal year 1994 for high priority capital improvement projects in American Samoa, Guam, Palau, and the Virgin Islands as well as the N.M.I. In the case of the areas other than the N.M.I., the projects will be funded after determinations are made by the Secretary of the Interior and an opportunity for review by this Committee and the Senate Energy and Natural Resources Committee on proposals submitted by insular governments. It is intended that the Secretary will consult with the committees in making these funding determinations. In the case of the N.M.I., actual congressional approval of the project funding will be required because of the Committee's unwillingness to make an unlimited commitment of special assistance to the N.M.I. at this time for the reasons further explained elsewhere in this report. The Interior Inspector General will be required to monitor the use of the funds provided under this paragraph as they are being expended and report by January 1, 1995 on how the funds were expended.

Paragraph (C) authorizes up to $98 million in fiscal years 1995 through 2000 for capital improvement projects in the N.M.I. The maximum amounts would be as follows: $21 million in fiscal year 1995; $20 million in fiscal year 1996; $18 million in fiscal year 1997; $16 million in fiscal year 1998; $14 million in fiscal year 1999; and $9 million in fiscal year 2000.

Subsection (c)(2) requires the N.M.I. to match 40 percent of the amount actually provided by the Federal Government in fiscal year 1995 for capital improvement projects, 44 percent of the amount provided for fiscal year 1996, 50 percent of the amount provided for fiscal year 1997, 56 percent of the amount provided for fiscal year 1998, 60 percent of the amount provided for fiscal year 1999, and 71 percent of the amount provided for fiscal year 2000. It will also continue the availability to the N.M.I. of some $27 million in interest earnings on assistance provided between fiscal years 1986 and 1992. Under an agreement between the governor of the N.M.I. and the Interior Department's Territorial and International Affairs Office, these funds can be released when the N.M.I. institutes full cost recovery rates for utility services.

Subsection (c)(3) requires not less than 12.5 percent of the total amount actually provided the N.M.I. between fiscal years 1995 and 2000 to be expended in the islands of Rota and Tinian and at least 25 percent in the island of Saipan.

***364** Subsection (c)(4) requires that all funds provided under this section will be subject to specified regulations applicable to most Federal grants.

Subsection (d)(1) limits the commitment of funds for the N.M.I. for fiscal years 1995 through 2000 to the amounts specified by Congress by joint resolution. It also expresses the intent that this Committee and the Senate Energy and Natural Resources Committee report such a resolution after considering a plan referenced in paragraph (2) and the reports required by paragraph (3).

Although the House and Senate committees will be expected to consider the findings and any recommendations in the required reports ****632** in making their determinations on funding, the findings and recommendations will in no way be binding on the Committee's determinations. Further, any lack of the required information would not preclude the committees from reporting funding legislation.

The primary purpose of the reports is to provide thorough and accurate information on complicated matters to facilitate informed policy-making by the Congress. This Committee expects that the agencies involved will make recommendations on

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the matters to be addressed in addition to providing a "status report" on them. Additionally, the Committee expects to hear the position of the government of the N.M.I. and others concerned on the matters to be addressed in the reports as well as the findings and recommendations of the agencies.

The requirements of further legislation to effectuate the commitment of the funds and the requirements for reports are intended to provide the N.M.I. with further time to address subjects of the reports. These subjects–and the N.M.I. policies regarding them–have been of great concern to the committee for some time. Although there have been promises to improve the policies and some clear progress in doing so, the Committee believes that the actions completed to date do not justify further special Federal assistance.

The Committee wishes to emphasize that these requirements would not compel the N.M.I. to take any policy actions which it does not desire to take or limit local government authority. Under these provisions, the N.M.I. will be free to act within its scope of authority as it wishes.

These provisions also make clear, however, that determinations on special Federal assistance will take local policies into account, particularly those policies which conflict with national policy requirements and principles, those which are at variance with Covenant understandings, and those which relate to the N.M.I.'s financial needs. This is appropriate since the special assistance is beyond that which is provided other areas of the American political family and beyond that which was required by the Covenant.

Subsection (d)(2) defines the plan referenced in paragraph (1) as a plan approved by the Legislature of the N.M.I. and submitted by the Governor to the Secretary of the Interior that specifies the projects to be funded in priority order and estimates total costs and identifies the sources of all funding needed for the projects. It would also require the Secretary of the Interior to provide the committee and the Senate Energy and Natural Resources Committees with recommendations on the plan not later than February 7, 1994.

***365** Subsection (d)(3) requires the submission of the following reports to the committee and the Senate Energy and Natural Resources Committee not later than February 7, 1994. The agencies which would be required to conduct the reports are expected to consult with the Committee on the scope of and plans for the studies, including matters to be addressed.

The Committee will have equal interest in the views of the government and residents of the N.M.I. and all others interested on the information presented in the reports and the matters they are to address. It has chosen to require Federal agencies to prepare the ****633** reports because of its interest in their perspective and the positions of the Executive Branch and because the agencies are responsible to the Congress. The agencies which would be required to conduct the studies were selected because of their expertise in and responsibilities for the issues concerned.

Paragraph (A) requires a report by the General Accounting Office on the total effective revenue burden in the N.M.I., comparing it to the need for funding for infrastructure and the revenue burden in Guam. Guam was chosen as a basis of comparison because the Covenant provided that Federal income tax rates would apply as a local tax in the N.M.I. "in the same manner" as it does in Guam and because Guam's economic circumstances are somewhat similar. A requirement for consulting with the government of the N.M.I. in the preparation of the report was not included because it is assumed that it will take place in any case.

Paragraph (B) requires a report by the Interior Department Inspector General regarding the N.M.I.'s compliance with Inspector General audit recommendations. In addition to responses to the recommendations, the report will indicate whether promised corrective actions have actually been taken. Information on all audits conducted by the Inspector General is expected to be provided. A requirement for consulting with the government of the N.M.I. in the preparation of the report was not included because the Committee assumes that this will take place in any case.

Paragraph (C) requires a report by the Secretary of Labor, developed in consultation with the government of the N.M.I., on the islands' minimum wage policies in effect in the islands. The report will assess whether the wages paid all classes of workers are adequate to support a decent standard of living, whether wages are effectively reduced by the pervasive use of foreign workers, and whether the wage rates in effect give businesses in the N.M.I. a competitive advantage over businesses elsewhere under the U.S. flag, including Guam.

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Paragraph (D)(i) requires a report by the Attorney General, developed in consultation with the government of the N.M.I., on the immigration policies in effect in the N.M.I. The report will focus on the N.M.I.'s policies regarding the use of foreign workers. It will assess whether the use of so many alien workers whose status is considered non-permanent under N.M.I. law is essential, reasonable, and fair to all concerned; whether the N.M.I. is trying to reduce reliance on this foreign labor force and promote employment of permanent residents of the N.M.I. or other areas under the U.S. flag and citizens of states in free association with the United States; the extent to which the N.M.I. is building an economy dependent upon ***366** non-permanent, foreign workers to perform relatively permanent jobs; and the disparities in rights possessed by relatively long-term non-permanent workers versus rights enjoyed by permanent residents.

Subparagraph (ii) requires a report by the General Accounting Office on the social and economic impacts of the presence of the large number of foreign workers in the N.M.I., including the extent to which their presence relates to the need for infrastructure. The report is expected to assess the full range of the costs and benefits ****634** associated with the presence of the aliens, including, but not limited to the costs to all public services, the revenue related to their presence, employment of local persons as well as other U.S. citizens, and other Micronesians, the impacts on crime and family life, and language and issues of any cultural conflict.

Paragraph (E) requires a report by the Secretary of the Interior and the Administrator of the Environmental Protection Agency on the compliance by the government of the N.M.I. with Federal environmental requirements.

SECTION 9002. NET RECEIPTS SHARING

This legislation directs the Secretary to deduct 50 percent of the costs of administering the mineral leasing programs from the gross receipts of such programs prior to statutory disbursement to the States and the Federal Treasury.

Section 9002 amends Section 35 of the Mineral Leasing Act by striking the last sentence and creating a subsection (a) and adding a new subsection (b).

Paragraph (1) of Subsection (b) directs the Secretary to deduct 50 percent of the portion of enacted appropriations for the preceding year allocable to the administration and enforcement of the Mineral Leasing Act prior to disbursement. Such deductions would be in approximately equal amounts each month.

Paragraph (2) provides the formula for calculating the proportion of the deduction allocable to each State.

Paragraph (3) provides that in the event the deduction allocable to a State in one month exceeds the disbursement due the State in that month, the cost recovery amount would be carried forward and deducted in subsequent months.

Paragraph (4) provides that all amounts deducted under this subsection from monies otherwise payable to a State would be credited to miscellaneous receipts in the Treasury.

SECTION 9003. HARD ROCK MINING CLAIM MAINTENANCE FEE

The legislation authorizes permanently charging a $100 per claim maintenance fee in lieu of the annual work assessment. In addition, the legislation allows the Secretary to waive or reduce the fee for certain claimants. Finally, the legislation requires the payment of a $25 location fee for all new claims.

Subsection (a)(1) provides that the claim holder of each unpatented mining claim, mill or tunnel site located pursuant to the general mining laws would pay to the Secretary or his designee for each assessment year a fee of $100 per claim. The claim maintenance fee replaces the annual work requirement in the 1872 Mining ***367** Law and the related filing requirements in Section 314(a) and (c) of the Federal Land Policy and Management Act.

Subsection (a)(2) requires that for each mining claim, mill or tunnel site located after the date of enactment of this bill, a location fee of $25 would be paid to the Secretary.

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Subsection (b) requires that the claim maintenance fee be paid prior to the commencement of the assessment year, except when ****635** the claim is located the claimant shall pay the maintenance fee at the time of location. The location fee shall be paid within 90 days of the date of location.

The Committee notes that no provision is made for pro-rating the claim maintenance fee for the year in which the claim is located and recorded. In addition to eliminating the added cost associated with pro-rating a $100 fee, it is believed that this approach will discourage individuals from "dropping" claims on August 31 and re-locating the same claim on September 1 of each assessment year.

Subsection (c) provides that the Secretary would deposit monies received under this bill as miscellaneous receipts in the Treasury.

Subsection (d) provides that the co-ownership provisions of the Mining Law of 1872 (section 2324) shall remain in effect with respect to mining claims subject to such provisions except that annual claim maintenance fee shall be paid in lieu of the annual work requirements.

Subsection (e) provides that failure to make the annual payment or location fee within the prescribed time frames would conclusively constitute forfeiture of the unpatented mining claim, mill or tunnel site at noon on the date the payment is due.

Subsection (f) provides that nothing in the bill would change or modify the requirements of section 314(b) of the Federal Land Policy and Management Act or the requirements of section 314(c) of that Act as it relates to filings required by section 314(b).

Subsection (g) directs the Secretary to promulgate regulations to carry out the purposes of this section as soon as practicable after enactment of this bill.

Subsection (h) directs the Secretary to adjust the claim maintenance fees every 5 years following the date of enactment of this bill, or more frequently if the Secretary determines a more frequent adjustment is reasonable, to reflect changes in the purchasing power of the dollar. The Secretary shall provide notice to claimants of any such adjustment no later than July 1 of any year in which the adjustment is made. A fee adjustment under this paragraph shall begin to apply the first assessment year after the adjustment is made.

Subsection (i) provides that this section would not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy of Policy Act of 1992.

Subsection (j)(1) provides exceptions for claim holders of fewer that 50 claims. A claimant could be eligible for a waiver or reduction of the claim maintenance fees imposed under this section if the claimant certifies in writing to the Secretary that on the date the payment was due that the claimant and all related parties held not more than 50 mining claims, mill or tunnel sites, or any combination thereof; and had performed $100 worth of assessment work sufficient to maintain the claims, except that claimants holding ***368** claims in areas, such as National Parks, where annual assessment work has been specifically waived by other statute, would not be required to perform such assessment work.

Subsection (j)(2) defines the term "holder".

Subsection (j)(3) provides that the Secretary may waive the claim maintenance fee imposed under this section in its entirety for 10 ****636** or fewer claims held by a claimant eligible under paragraph (1). Further, the Secretary may reduce the claim maintenance fee to $25 for each claim in excess of 10 and less than 50 for claimants eligible under paragraph 1.

Subsection (j)(4) amends the 1872 Mining Law to conform with this section.

Subsection (j)(5) provides that any unpatented mining claim for which a waiver or reduction has been granted would continue to be subject to the filing requirements contained in section 314(a) and (c) of the Federal Land Policy Management Act of 1976.

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Subsection (k) provides that this section would take effect with respect to assessment years beginning after August 31, 1994.

SECTION 9004. FEDERAL IRRIGATION WATER SURCHARGE

Subsection 9004(a) states that Congress has found that the construction and operation of Federal reclamation projects have had various effects on streams, habitat, water quality, and that these projects have caused adverse effects on fish and wildlife resources. The restoration of these affected resource values is the responsibility of the beneficiaries of such projects. Four purposes are described: incorporating restoration into the annual operation and maintenance responsibilities of projects; setting up a mechanism for paying for restoration work; moving quickly to restore depleted populations of indigenous fish and wildlife; and, encouraging more efficient water use.

Subsection 9004(b) requires those individuals or non-Federal entities who receive water from Federal reclamation projects or certain Corps of Engineers projects to pay an annual operation and maintenance charge. This charge applies to all water users, and is in addition to any and all other charges currently paid for project water service or repayment. This is to be a free-standing operation and maintenance charge, and it is not to be reduced or deferred for any reason, nor is it to have any effect on other debts or obligations of the water users. Payments assessed and collected under this section also may not be credited to other debts or charges owed. The Secretary of the Interior is authorized to establish the terms, conditions, and procedures to assess and collect the new operation and maintenance charge. The charges assessed and collected must be sufficient to yield at least $10,000,000 annually in the years 1994, 1995, and 1996, and at least $15,000,000 annually thereafter. Water users in the Central Valley Project, California, are exempt from these charges.

Subsection 9004(c) establishes in the Treasury of the United States the “Natural Resources Restoration Fund”. Payments collected under section 9004(b) shall be deposited into this fund, and shall be available, subject to appropriation, for the benefit of fish and wildlife resources, including habitat, affected by construction ***369** and operation of the water development projects referred to in this section.

Subsection 9004(d) provides that, for the purposes of this section, Indian tribes and certain individual Indian beneficial owners of land shall be considered “Federal entities”.

****637** Subsection 9004(e) provides that section 9004 shall constitute an amendment of and a supplement to the Federal reclamation laws.

SECTION 9005. COMMERCIAL AND RECREATION USER FEES

Subsection 9005 (a)(1) amends the recreation use fee provisions of the Land and Water Conservation Fund in several ways. First, it deletes the prohibition on charging for boat ramps or boat launching facilities at outdoor recreation sites. It retains the current prohibition on charging user fees either singly or in combination for drinking water, wayside exhibits, roads, overlook sites, visitor centers, scenic drives, toilet facilities and picnic tables. It changes the minimum requirements for charging for overnight camping to require that a majority of the requirements in existing law be met rather than all of them. Any combination totalling five of the following eight criteria is sufficient to allow for a charge for overnight camping: tent or trailer spaces, drinking water, access roads, refuse containers, toilet facilities, fee collection by an employee or agent of the Federal agency operating the facility, reasonable visitor protection and devices for containing a campfire where campfires are permitted. The Committee is aware of the long-standing practice of using fee collection boxes at campgrounds and considers such devices to be adequate to meet the requirement of fee collection. Day use charges can be imposed for specialized outdoor recreation sites such as swimming sites, boat launch facilities and managed parking lots at Department of the Interior, Forest Service and Army Corps of Engineers outdoor recreation sites. The agencies managing such areas have a certain amount of discretion to decide where such day use charges are appropriate. While authority was requested, the Committee did not authorize for there to be a specific charge for the use of picnic tables.

Subsection 9005(a) repeals the requirement that there be one free campground at each lake or reservoir managed by the Army Corps of Engineers.

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Subsection 9005(a)(2) is a conforming amendment which repeals certain limitations on the Army Corps of Engineers from charging user fees at Army Corps of Engineers lakes and reservoirs. The Committee notes that the legislative language proposed to be repealed is duplicative of that found in the Land and Water Conservation Fund Act. The repeal of this section does not authorize the Army Corps of Engineers to charge entrance or admission fees to Corps projects. Section 4(a) of the Land and Water Conservation Fund Act clearly states that entrance and admission fees shall only be charged at designated units of the National Park System and National Recreation Areas administered by the Department of Agriculture.

Subsection 9005(b) authorizes the Secretaries of Agriculture and the Interior to deduct from the special account fee receipts equal to the additional fee collection costs for that fiscal year. These funds shall be available without further appropriation to cover the ***370** additional costs directly associated with fee collection such as personnel and infrastructure. The Committee believes that Federal agencies and their employees will be better motivated to collect fees efficiently when they know that those activities will not detract ****638** from other important employee functions. The Committee intends that nothing in this subsection shall prevent the use of fees collected in other parks to fund start-up costs for parks that do not now charge entrance fees. The Committee believes that the enhanced collection ability will generate adequate funding to allow for collection at new areas where such fees are currently authorized but not charged such as Lake Mead National Recreation Area and Glen Canyon National Recreation Area. The Committee expects very high standards of accountability for these deducted fee collection funds by the National Park Service.

Subsection 9005(c) requires a one-time administrative processing fee of $10 for issuance of a lifetime nontransferable Golden Age Passport, already provided for in existing law, to admit its holder and accompanying spouse to National Park System units. The Committee adopted an amendment to add this fee in order to offset the revenue reduction resulting from the Committee's deletion of provisions to enforce the existing requirement that commercial radio and television broadcasters pay the fair market value for use of Federal lands for transmission facilities.

Subsection 9005(d) directs the Secretary of the Interior to impose and collect an annual fee for the use and occupancy of any right-of-way through any national park system unit for which a permit has been issued by the Secretary pursuant to any general or specific statutory right of way authority whether issued before or after the enactment of this Act or for any other right-of-way allowed as of the date of enactment of this Act. The amount of the annual fee shall be equal to the fair market rental value as determined by the Secretary and the fair market value shall be reviewed and revised if necessary at least every three years.

Subsection 9005(e) directs the Secretary of the Interior to establish prior to Fiscal Year 1994 a commercial tour use fee to be imposed on each vehicle or aircraft entering a unit or the airspace of a unit of the National Park System for which an admission fee is charged for the purpose of providing commercial tour services within the unit or the airspace of the unit. The Section authorizes the Secretary to establish the amount of the fee and includes minimums based on the passenger capacity of the vehicle or aircraft. It authorizes the Secretary to periodically increase the fee as he deems necessary and justifiable and it exempts organized school groups and other educational outings from the fee. Vehicles and aircraft under a concessions contract are also exempt.

The Committee intends the commercial tour use fee to apply only to transportation services for which the sole or primary purpose is to provide tour services within the unit or the airspace of the park. The Committee does not intend the fee to apply to airlines transporting passengers between destinations outside of the park which happen to fly over a park unit. The fee should only apply to aerial tours which are organized for the primary purpose of viewing the park such as those which now exist at Grand Canyon National Park and at various national park units in Hawaii. Likewise, buses ***371** or other commercial tour vehicles which are not providing tour services at the time they enter the park should not be charged the fee.

****639** The Committee intends the Secretary to treat the commercial tour use fee for vehicles in the same way it treats the admission fee for a single visit under section 4(a)(2) of the Land and Water Conservation Fund Act. Thus the commercial tour use fee means more or less a continuous stay within a designated area with exits and reentries authorized for a period of from one to fifteen days, such period to be defined by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for a single visit.

For the purpose of assessing a commercial tour use fee, the Committee intends "airspace" to mean that area above or adjacent to the land surface of a unit of the National Park System, identified by the National Park Service in consultation with the

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Federal Aviation Administration for each unit of the National Park System in or adjacent to which commercial air tours are operating or may operate. The Committee does not intend this authority to interfere in any way with the Federal Aviation Administration's jurisdiction or authority to regulate air travel.

The Committee notes the impact that commercial tour services can have on park resources. These impacts include erosion of park roads, overburdening of sanitary facilities, degradation of air quality which leads to increased maintenance costs and excess noise. The Committee notes that over 137,000 commercial tour buses entered into admission fee parks in 1992. In the National Parks Overflights Act of 1987, Congress recognized that "noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park." Tour operators generate their revenues by selling national parks as a destination and a modest fee is a reasonable and justifiable means of addressing the impacts they have on park resources and personnel. The current system of Commercial Use Licenses is not consistently enforced and does not address issues such as the frequency of park usage or the size of the vehicle.

The Committee does not intend nor believe that this fee will discourage group transportation to national park units. The small amount of the fee in comparison to the overall charge for such tours is not likely to be a determining factor in whether to take a bus tour or travel in a private vehicle. The Committee will monitor the effects of this fee closely and if it is determined that the commercial tour fee is discouraging group travel then it may reconsider it.

Subsection 9005(f) provides for payment of fair market value, as determined by the Secretary of the Interior or Secretary of Agriculture, for use of BLM-managed public lands and National Forest lands for commercial telephone transmission facilities. To enforce this requirement of existing law, payment of the fair market value fee will be a prerequisite to continued effectiveness of permits for such use of affected Federal lands. The Committee adopted an amendment to delete a similar enforcement provision for commercial radio and television facilities, but intends to revisit that issue in this Session of Congress.

****640*372** SECTION 9006. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

This section extends the current requirement that the Nuclear Regulatory Commission recover 100 percent of its budget through Nuclear Waste Fund appropriations, fees for services, and annual charges for fiscal years 1996 through 1998.

SECTION 9007. RECOVERING THE COST FOR GOVERNMENT SERVICES

This section directs the Secretaries of the Interior and Energy to provide the appropriate committees of the Congress by January 1, 1994 with a report that details all fees, penalties and other charges levied by his or her respective department, including mechanisms for periodically reviewing and modifying those fees to assure that all government costs are recovered. The bill also directs the secretaries to identify services for which no fee is currently charged, and to implement a fee adequate to cover the cost of provision of the service beginning in fiscal year 1995. Lastly, each secretary is directed to establish procedures to assure that all fees levied by the department are periodically reviewed and modified to reflect the cost of provision of the service.

SECTION 9008. UNFUNDED LIABILITIES OF THE FEDERAL GOVERNMENT

This section requires that the President's annual budget submission include an estimate of unfunded future liabilities of the Federal Government. The estimate should include known future liabilities, such as environmental clean-up costs for Federal lands, as well as less certain potential liabilities, such as shared Federal responsibility for certain Superfund sites. The estimate will necessarily be inexact, because Federal liability is subject to current or future litigation in many cases. The budget submission should acknowledge situations in which judgments have been made regarding potential future imposition of liability, or in which liability is contingent upon the determination of legal issues.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

On May 12, 1993, the Committee on Natural Resources considered and marked-up the text of Title IX, Committee on Natural

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Resources Reconciliation for fiscal year 1994 to satisfy the reconciliation targets assigned to the Committee by the Budget Resolution. The Committee ordered the text to be favorably reported, as amended, to the Committee on the Budget by a vote of 27 yeas and 14 nays.

CHANGES IN EXISTING LAW MADE BY TITLE IX OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

***373** ACT OF MARCH 24, 1976

JOINT RESOLUTION To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes.

* * * * * * *

[Sec. 3. Pursuant to section 701 of the foregoing Covenant, enactment of this section shall constitute a commitment and pledge of the full faith and credit of the United States for the payment of $228 million at guaranteed annual amounts of direct grant assistance for the Government of the Northern Mariana Islands for an additional period of seven fiscal years after the expiration of the initial seven-year period specified in section 702 of said Covenant, which assistance shall be provided according to the schedule of payments contained in the Agreement of the Special Representatives on Future United States Financial Assistance for the Government of the Northern Mariana Islands, executed July 10, 1985, between the special representative of the President of the United States and the special representatives of the Governor of the Northern Mariana Islands. The islands of Rota and Tinian shall each receive no less than a ⅛ share and the island of Saipan shall receive no less than a ¼ share of annualized capital improvement project funds, which shall be no less than 80 per centum of the capital development funds identified in the schedule of payments in paragraph 2 of part II of the Agreement of the Special Representatives. Funds shall be granted according to such regulations as are applicable to such grants.

[Sec. 4. (a) Section 704(c) of the foregoing Covenant shall not apply to the Federal financial assistance which is provided to the Government of the Northern Mariana Islands pursuant to section 3 of this Act.

[(b) Upon the expiration of the period of Federal financial assistance which is provided to the Government of the Northern Mariana Islands pursuant to section 3 of this Act, payments of direct grant assistance shall continue at the annual level provided for the last fiscal year of the additional period of seven fiscal years until Congress otherwise provides by law.]

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SECTION 35 OF THE MINERAL LEASING ACT

Sec. 35. (a) In General.–All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, shall be paid into the Treasury of the United States; and, subject to subsection (b), 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted ***374** by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252).

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All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved. [In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.]

(b) Administrative Costs.–(1) In calculating the amount to be paid to each State during any fiscal year under this section and under other provisions of law requiring payment to a State of any revenues derived from the leasing of any other onshore lands or interest in land owned by the United States for the production of the same types of minerals as are leasable under this Act or for the production of geothermal steam, prior to the division and distribution of such leasing receipts between the States and the United States, the Secretary shall deduct 50 percent of the portion of the enacted appropriations of the Department of the Interior and of other departments and agencies of the United States for the preceding fiscal year allocable to the administration and enforcement of this Act and such other provisions of law. Such deduction shall be in approximately equal amounts each month (subject to paragraph (3)).

(2) The proportion of the deduction required under paragraph (1) which is allocable to each State shall be a percentage of the total deduction allocable to all States. The percentage shall be determined by dividing–

(A) the monies disbursed to the State during the preceding fiscal year under the provisions of this section and the other provisions of law referred to in paragraph (1), by

***375** (B) the total money disbursed to all States during that fiscal year under such provisions.

(3) If the amount otherwise deductible under this subsection in any month from the portion of revenues to be distributed to a State exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months.

(4) All amounts deducted under this subsection from monies otherwise payable to a State shall be credited to miscellaneous receipts in the Treasury.

SECTION 2324 OF THE REVISED STATUTES

Sec. 2324. The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, for which a waiver of the maintenance fee, or a reduced maintenance fee, under section 9003 of the Omnibus Budget Reconciliation Act of 1993 has been granted under subsection (j) of that section, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners

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who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice is writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made required expenditures. Provided, That the period within which the work required to be done annually ***376** on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim: Provided further, That on all such valid existing claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922. [That section two thousand three hundred and twenty-four of the revised statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.]

SECTION 4 OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965

ADMISSION AND USE FEES; ESTABLISHMENT AND REGULATIONS

Sec. 4. (a) Admission Fees.–Entrance or admission fees shall be charged only at designated units of the National Park System administered by the Department of the Interior and National Recreation Areas administered by the Department of Agriculture. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a Federal agency and used for outdoor recreation purposes.

(1)***

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(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit (to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. [Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection.] Such permit shall be nontransferable, shall be issued for a charge of $10, and shall entitle the permittee and the permittee's spouse accompanying the permittee to general admission into any area designated pursuant to this section. No other free permits shall be issued to any person: Provided, That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local Government business and Provided further, That for no more than three years after the date of enactment of this Act, visitors to the United States will be granted entrance, ***377** without charge, to any designated admission fee area upon presentation of a valid passport.

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(b) Recreation Use Fees.–Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: Provided, That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, [picnic tables, or boat ramps: Provided, however, That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or facilities are provided: And provided further, That in no event shall there be a charge for the use of any campground not having the following–tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army,

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where camping is permitted, such agency shall provide at least one primitive campground, containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed.] or picnic tables, and in no event shall there be any charge for the use of any campground not having a majority of the following: tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, fee collection by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For purposes of this subsection, the term "specialized outdoor recreation site" includes but shall not be limited to campgrounds, swimming sites, boat launch facilities, and managed parking lots. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

* * * * * * *

(i)(1)(A) Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.

(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts the fees collected in that fiscal year ***378** under this section as such Secretary determines to be equal to the additional fee collection costs for that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior and shall be available, without further appropriation, for expenditure by the Secretary concerned in the fiscal year in which collected to cover such additional fee collection costs. The Secretary concerned shall deposit in the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of such fiscal year. For the purposes of this subparagraph, for any fiscal year, the term "additional fee collection costs" means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section which exceed the costs for personnel and infrastructure directly associated with the collection of such fees during fiscal year 1993.

* * * * * * *

SECTION 210 OF THE ACT OF AUGUST 13, 1968

AN ACT Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

[Sec. 210. No entrance or admission fees shall be collected after March 31, 1970, by any officer or employee of the United States at public recreation areas located at lakes and reservoirs under the jurisdiction of the Corps of Engineers, United States Army. User fees at these lakes and reservoirs shall be collected by officers and employees of the United States only from users of highly developed facilities requiring continuous presence of personnel for maintenance and supervision of the facilities, and shall not be collected for access to or use of water areas, undeveloped or lightly developed shoreland, picnic grounds, overlook sites, scenic drives, or boat launching ramps where no mechanical or hydraulic equipment is provided.]

OMNIBUS BUDGET RECONCILIATION ACT OF 1990

* * * * * * *

TITLE VI–ENERGY AND ENVIRONMENTAL PROGRAMS

* * * * * * *

Subtitle B–NRC User Fees and Annual Charges

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SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) Annual Assessment.–

(1)***

* * * * * * *

***379** (3) Last assessment of annual charges.–The last assessment of annual charges under subsection (c) shall be made not later than September 30, [1995] 1998.

* * * * * * *

SECTION 1105 OF TITLE 31, UNITED STATES CODE

S 1105. Budget contents and submission to Congress

(a)***

* * * * * * *

(g) The President shall transmit with materials related to each budget an estimate of unfunded future liabilities of the Federal Government that are not accounted for in the budget itself. Such estimate shall include (but not be limited to) liabilities for future remediation of environmental and natural resources damage, and cleaning up waste sites, on Federal lands. Sources of liabilities shall include (but not be limited to) active, inactive, or abandoned mines or oil or gas wells, irrigation waste water impacts, decommissioning of nuclear power plants, and uranium mining and processing activities (without regard to the location of such mining or processing activities) affecting the health of Native Americans and carried out pursuant to a program administered by the United States.

****641** INFLATIONARY IMPACT, COST, AND BUDGET ACT COMPLIANCE

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives the Committee finds that enactment of these provisions after its enactment will have no inflationary impact on the national economy and will not result in significant costs. The estimate of the Congressional Budget Office follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. George Miller,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation recommendations of the House Committee on Natural Resources.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Reconciliation Recommendations of the House Committee on Natural Resources.

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3. Bill status: As ordered reported by the House Committee on Natural Resources on May 12, 1993.

4. Bill purpose: Section 9001 would repeal the current funding agreement with the Commonwealth of the Northern Mariana Islands ***380** (CNMI), provide a guaranteed level of funding for 1994, and authorize funding for grants to the CNMI for 1995–2000 that would be contingent on passage of a joint resolution of Congress.

Section 9002 would require the Secretary of the Interior to deduct fifty percent of certain administrative costs before distributing mineral receipts to the states.

Section 9003 would impose a $25 fee on all new hardrock mining claims located after enactment of the bill. Claimants holding more than 50 claims (whether located before or after the bill's enactment) would be required to pay $100 annually per claim to maintain rights to their claims. Claimants holding 50 or fewer claims would be exempt from paying a maintenance fee on their first 10 claims and would be required to pay $25 annually per claim to maintain all other claims.

Section 9004 would require all recipients of water from federal reclamation projects, except the Central Valley Project in California, to pay an annual operation and maintenance fee on water deliveries. The charge would be set at a level sufficient to collect a total of at least $10 million annually (at January 1993 prices) over the 1994–1996 period and $15 million annually (at January 1993 prices) thereafter. All receipts collected would be deposited into a new Natural Resources Restoration Fund and would be available for appropriation in the year following collection.

****642** Section 9005 would relax minimum standards that must be met in order for federal agencies to charge user fees at recreation facilities under their jurisdictions. This section would also permit the Departments of Agriculture and the Interior to retain and spend, without further appropriation, additional amounts necessary to enhance their fee collection efforts. Subsection 9005(c) would impose a new one-time $10 fee for Golden Age Passports issued to persons 62 years or older. Other provisions would impose new fees for commercial tour operations in national park units and for communication and utility rights-of-way.

Section 9006 would amend the Omnibus Budget Reconciliation Act of 1990 to extend through 1998 the annual charges collected from nuclear utilities to offset the cost of the Nuclear Regulatory Commission (NRC).

5. Estimated cost to the Federal Government:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
***381** The budgetary impact of this bill falls within budget functions 270, 300, and 800.

Basis of estimate

Section 9001–Grants for Insular Areas

The United States currently provides the CNMI $27.72 million per year in direct grant assistance, and under existing law, such ****643** payments will continue indefinitely. Section 9001 would repeal the relevant sections of the existing funding agreement, thereby reducing direct spending by $27.72 million per year. In fiscal year 1994 that savings would be partially offset by $22 million of new direct spending, of which $3 million would go to the Mariana Islands and $19 million would be distributed among several insular areas in amounts to be determined by the Secretary of the Interior.

This section also would provide for annual payments to the Mariana Islands totalling no more than $98 million for fiscal years 1995 through 2000. No payments would be made, however, until the Congress passed a joint resolution specifying the amounts to be paid in each year. Because the payments are contingent on a subsequent act of the Congress, this bill alone would cause no new direct spending for payments to the CNMI in those years. If Congress passed a joint resolution providing for the payments, that resolution would be scored with new direct spending. The net effect of this section would be to reduce direct spending by about $6 million in fiscal year 1994 and by about $28 million in each year after 1994.

Section 9001 would require the General Accounting Office and several federal agencies to study various conditions in the

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Northern Mariana Islands and transmit seven separate reports to the Congress no later than January, 1994. Because of the short time period allowed, CBO estimates that these studies would not be extensive projects and that the costs would not be significant. Such costs would be paid from appropriated funds.

Section 9002–Mineral Receipts Sharing

Since states receive fifty percent of all mineral receipts collected by the federal government on public lands, the receipt-sharing provisions of this bill would require the states to share 25 percent of the program costs and would thus result in lower payments than they receive under current law. Based on fiscal year 1993 appropriation ***382** levels and on information provided to CBO by the Department of the Interior, we estimate that the agency would deduct $80 million to $90 million annually from mineral receipts before calculating payments to the states for their share of these collections over the next five years. The reduction in payments to states would be half these amounts. Accounting for the lag between the collection and distribution of receipts to the states, these deductions would result in savings to the federal government totaling $35 million in 1994 and $201 million over the 1994–1998 period.

Section 9003–Mining Fees

CBO estimates that, by imposing claim location and maintenance fees, this section would increase federal offsetting receipts–thereby decreasing direct spending outlays–by about $41 million a year over the 1994–1998 period. Because data on current claim holders are limited, it is difficult to predict how many individuals or companies would choose to locate or maintain mining claims when faced with paying an annual fee. Furthermore, it is difficult to determine from existing information how many claimants would qualify ****644** for the fee waiver or reductions. For the purposes of preparing this estimate, we assumed that ultimately maintenance fees would be paid on about half of the existing 760,000 claims. We further assumed that new claims would be located at roughly the historical rate (about 130,000 a year). As a result, CBO estimates that the maintenance fees would bring in about $38 million a year and the location fees about $3 million.

Section 9004–Irrigation Surcharge

The bill specifies the amounts to be raised by the surcharge. Based on the magnitude of historical water deliveries by the Bureau of Reclamation (roughly 20 million acre-feet per year, excluding the Central Valley Project), CBO believes that it would be possible to raise the specified amounts through a per-acre-foot surcharge.

Section 9005–Recreation User Fees

CBO estimates that federal recreation agencies would collect additional fees totaling $68 million in 1995, rising to $88 million in 1998. Because it would take several months to establish and implement the new fees, 1994 receipts would be lower–about $44 million. Partially offsetting the new receipts would be new direct spending for additional collection costs for the National Park Service (between $4 million and $8 million per year) and additional payments to states (about $1 million per year).

Section 9006–NRC Fees

Under current law, effective through 1995, the NRC is required to collect charges equal to 100 percent of its budget authority, excluding amounts appropriated from the Nuclear Waste Fund. As a result, NRC's net budget authority in 1993 is about $21 million, though its spending is over $500 million. The Budget Enforcement Act of 1990 requires that the baseline for discretionary accounts be inflated from the current year's net appropriation, which reflects the collection of fees. Consequently, extending these fees would not ***383** result in savings when measured against the CBO baseline. Under current law, however, the fees would decline substantially after fiscal year 1995. Extending the current fees through 1998 would result in additional offsetting collections of $378 million in 1996, $389 million in 1997, and $402 million in 1998, relative to current law and assuming gross appropriations at the 1993 level adjusted for inflation.

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6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mickey Buhl (Section 9001), Theresa Gullo (Sections 9002–9004), Deborah Reis (Section 9005), Susanne Mehlman (Section 9005), and Kim Cawley (Section 9006), who can be reached at 226–2860.

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

****645*384** DISSENTING VIEWS

SECTION 9001–MARIANAS ASSISTANCE

Nearly fifty years ago, United States armed forces invaded the northern islands of the Marianas archipelago and liberated the islands from Japanese occupation. The United Nations subsequently gave the United States a trust authority over the islands for their future social, political, and economic development.

On February 15, 1975, the people of the Northern Marianas voted to join the American family as the Commonwealth of the Northern Mariana Islands. The United States and the Marianas defined the federal-territorial relationship in a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The Congress enacted Public Law 94–241, on March 24, 1976, to implement the new relationship. A decade later, the residents became U.S. citizens by presidential order.

One of the objectives of the Covenant was for the U.S. to assist the Marianas in achieving a progressively higher standard of living and to develop the economic resources to meet the financial responsibilities of local self-government. The Covenant provided the Marianas with guaranteed direct annual assistance to meet these objectives for a discrete number of years until the Congress determined otherwise.

From 1978 to 1993, the U.S. has generously provided millions of dollars to develop the islands infrastructure to allow for economic growth. With this continuous period of guaranteed annual direct grant assistance, the islands enjoy a robust economy and one of the lowest rates of unemployment in the U.S. The Marianas have achieved a progressively higher standard of living and sufficient economic resources to meet the financial responsibilities of local self-government, indicating primary objectives of the federal-territorial relationship have been met.

The economy of the NMI has been built on the textile and tourist industries. Due to the largely unrestricted growth of these industries, a high number of aliens have been admitted. Today, over half of the 46,000 population are aliens. Not surprisingly, in spite of the hundreds of millions of federal dollars of guaranteed annual direct grant assistance, the improved infrastructure in the NMI is straining to meet the demands of the growing industries and population.

The Marianas have ample resources from local revenue sources to continue the pace of capital infrastructure development which has occurred over the past decade and one-half with federal funds. The Marianas rebates some $50 million dollars in taxes to its residents annually, who enjoy one of the lowest tax rates in the U.S. as they pay virtually no federal taxes.

***385** Covenant Section 704 provides that the guaranteed annual direct grant assistance will “continue until Congress appropriates a different amount or otherwise provides by law.” The former administration ****646** concluded a third seven-year funding agreement with the NMI which President Clinton endorsed and included in his economic stimulus plan.

If the multi-year agreement is enacted, the NMI’s current annual direct grant assistance of $27.72 million would be significantly reduced. However, given the ready resources available to the NMI from tax rebates alone, even the new lower level of assistance cannot be justified. The U.S. taxpayer should not be subsidizing businesses and individuals in the Marianas while the rest of the U.S. is facing economic and financial uncertainty.

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The Republicans proposed Congress repeal the guaranteed annual direct grant assistance to the NMI, thereby saving $27.72 million per annum or nearly $200 million over the seven year period of the new agreement. While the Majority includes repeal of the statute guaranteeing assistance to the NMI, the full amount of the funding agreement is authorized anyway. The NMI does not receive the agreement's first year's level of funding of $22 million, as the first year money is instead directed to the cost of an American Memorial Park in Saipan ($3 million) and a capital infrastructure fund of $19 million for the U.S. territories (excluding Puerto Rico) and the Trust Territory of the Pacific Islands (Palau). The Majority continues to authorize with full faith and credit $98 million in infrastructure development funds for the Marianas in spite of the repeal provision. The NMI would receive the funds after a number of federal agencies issue reports concerning problems in the NMI and the Congress enacts a joint resolution agreeing to the distribution of funds to the NMI.

The complete potential savings of the repeal of the Northern Mariana Islands guaranteed annual direct grant assistance may not be realized if the first year's monies are redirected for other purposes as the Majority proposes. Furthermore, the savings which the Congressional Budget Office is currently crediting to the repeal of the provision guaranteeing annual direct grant assistance, also may not be realized if the joint resolution called for in the Majority's bill is enacted for funding years 2 through 7.

Given the level of development and availability of local resources in the Northern Mariana Islands, it is reasonable and appropriate for the U.S. citizens in the Marianas to shoulder their financial share in the continued development of the islands, rather than depending solely on the U.S. taxpayer.

SECTION 9002–NET RECEIPTS SHARING

This section would make permanent the provision from the FY 92 and 93 Interior & Related Agencies Appropriations Acts wherein one quarter of the federal government's costs of administering the Mineral Leasing Act of 1920, as amended, (MLA) are paid by the states receiving leasing act revenues. These costs are summed from Bureau of Land Management, Minerals Management Service and U.S. Forest Service budget codes for onshore leasing activities.

The "sharing" is accomplished by "fencing off" in the Treasury half of the receipts from rents, royalties, and bonus bids for coal, ***386** oil, gas, sodium, potash, phosphate, and gilsonite leases on both public domain and acquired lands. Because the "gross" revenues ****647** are otherwise distributed 50–50 with the states whence the receipts came (except Alaska which has a 90–10 split), in effect the states pay one-fourth.

We are opposed to net receipts sharing as would be implemented under this approach, for several reasons. First, because the states that receive revenues from the MLA are forced to share in the costs of that program there is a lessened incentive for the Federal agencies to keep administration costs down. This fear is manifested in the 27.6% growth in the states share of the program's costs from FY 92 actual through CBO's score for FY 98 projected: from $34.481 million to $44 million in just six years.

Secondly, we believe the states may well be able to perform some or all of the administration of the Mineral Leasing Act in a more efficient manner than the Department of the Interior agencies and the U.S. Forest Service. To date, only the receipt collection and auditing functions have been studied in this regard. The report, prepared at the behest of the Appropriations Committee by the Minerals Management Service, predictably argued the Federal government has economies of scale unmatched by the states and thus can do the job more efficiently. However, a subgroup of the states prepared a rebuttal analysis to demonstrate that at least several states can easily beat the Federal government's costs. For example, this group estimated the cost of the Minerals Management Service collecting $1,000 in royalties at $60, yet Wyoming collects $1,000 in severance taxes for only $5.

Lastly, we oppose in principle the imposition of a Federal mandate upon the states that does not include state-supported alternative means of compliance. In other words, if the states' share of MLA revenues is to be diminished because the Federal government's costs of administering the law are too high then we should give the states the option of performing the costly tasks themselves.

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SECTION 9003–HARD ROCK MINING CLAIM MAINTENANCE AND LOCATION FEES

This section would make permanent the fees first established in the FY 93 Interior & Related Agencies Appropriations Act whereby entities holding claims and sites under the 1872 Mining Law would pay $100/claim to the Treasury rather than be obliged to perform "assessment work." Despite the fact that millsites and tunnelsites have no such requirement for annual labor performance, the "holding fee in lieu of assessment work" applies to these types of locations as well. The fee proposed had been floated in Administration budgets for two years prior to its adoption for FY 93.

The Minority is pleased the committee print was redrafted from an earlier version that lacked any exceptions to payment of the fee to one which incorporates in large measure the "small business relief" that was part of the Minority's alternative package. Nevertheless, we oppose this section because it does not mandate such relief, rather it only gives the Secretary of the Interior the discretion to waive or reduce the $100 per claim per year fee for miners holding only a few claims.

****648*387** Under current law, the small business exemption language sponsored by Senator Stevens provides a guaranteed exemption from the holding fees if assessment work is performed and the claimant seeking relief meets the conditions mandated. We view the addition of discretion to not grant the small business relief as an unnecessary precaution that will drive up the costs of administering the holding fee. Given the Secretary's order of March 2, 1993, wherein he rescinded the long-held delegated authority of the Bureau of Land Management (BLM) to issue first-half final mineral certificates and mineral patents, we are unpersuaded the current Secretary will be inclined to delegate the discretion he is being given under this section. A very cumbersome procedure for the granting of small business relief may well result with very little increased revenue to the Treasury, and likely less because of increased compliance costs and fewer claims being held because of the threat that otherwise warranted relief may not be forthcoming.

We wish to remind the Majority that for over 121 years a miner's assessment work obligation could be met by the sweat of his or her brow as well as through payment to drilling contractors and equipment operators. Now, unless the Secretary grants a small business exception, a cash fee must be paid. The effect of an in-lieu fee is to greatly diminish the dollars spent in the local economy for heavy equipment operators, diamond drilling contractors, etc. We are concerned the full impact of the reduction in revenues to the Treasury from income taxes collected from such activities, and their multiplier effects, has not been properly studied.

Lastly, we should not forget many Western states have their own laws requiring the performance of assessment work independent of a federal obligation. Miners in such states will have to pay the holding fees and perform assessment work or risk losing their claims to those who would do both.

SECTION 9004–FEDERAL IRRIGATION WATER SURCHARGE

The Minority believes that the Majority's ratification of the Administration's so-called irrigation surcharge is poorly crafted and, in reality, amounts to a new tax on irrigators in 17 western states.

The revenue from this surcharge will not reduce the deficit, but will be put aside for fish and wildlife mitigation. Rather than raising revenue for the U.S. Treasury, this surcharge will instead duplicate fees that many farmers are paying under current contracts.

In addition, the Minority is very concerned about the proposal's rather cavalier attitude toward irrigators who are operating at the margin. In its supporting documentation the Administration admits that no consideration was given to users ability to pay, and that the "surcharge should be assessed even if the users payment capacity is marginal."

Furthermore, the Interior Department Solicitor-designee concedes that the surcharge will not be uniformly applied and that lingering questions remain about the legality of imposing a surcharge on districts that currently have long-term repayment contracts with the federal government.

The Minority shares the concerns of some Committee Democrats who expressed reservations about language in the bill to "yield at least $10 million annually." This language leaves open the option ****649*388** for the Administration to levy a punitive surcharge far in excess of 50–75 cents per acre foot of water. In fact, the Administration has documented that "it

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could argue that the surcharge be at least $1 per acre foot."

Assessing a surcharge of this magnitude on irrigators in 17 western states without the benefit of a hearing is bad public policy. Accordingly, the Minority cannot justify supporting this proposal until the myriad of unresolved questions about the irrigation surcharge are addressed.

SECTION 9005–RECREATION USER FEES

Currently, the existing recreation fee system allows for a large disparity between fees at different facilities on federal lands. For example, Yellowstone National Park charges a $10 entrance fee while Golden Gate National Recreation Area has no entrance fee. The Majority proposal would retain the existing recreation fee system which is highly inconsistent among the differing federal agencies and highly favors urban facilities over other destination facilities.

The Majority fee system contains over-simplistic proposals for increased fees for commercial tours which cannot be enforced and furthermore, are opposed by the agencies themselves. For example, the majority proposes to invoke fees on aircraft that fly over federal reservations. This provision may well violate the jurisdiction of the Federal Aviation Administration.

The majority's bill does nothing to ensure that the recreation fees collected by the specific facility will be returned to the users or the facility for improved management of the area. The majority has simply selected to treat recreation fees as a new way to tax recreation users rather than as a tool to enhance the viability and operation of these developed areas.

The Minority had a proposal that would have generated $403 million (compared to the Majority proposal of $330 million) in recereation use and entrance fees. This provision provided a comprehensive and consistent program be established among all Federal agencies providing outdoor recreation (National Park Service, Forest Service, Fish and Wildlife Service, Bureau of Reclamation, Corps of Engineers and Bureau of Land Management). This would help offset the taxpayer subsidy for recreational users of federal lands, which will total $1.3 billion in 1993. Fees could only be charged for developed recreation areas: parks, campgrounds, boat launching, swimming beaches, and not for general public access. The existing single visit entrance cap of $10 would be retained, but could be adjusted over time based on inflation. Park forests, and refuges would retain, without additional appropriation, entrance fees from sales of annual geographic permits. The Golden Age Pass, now free to senior citizens, would be subject to a one-time charge. A study of potential impacts from federal recreation fees on low income persons would be required.

SECTION 9006–NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

The Minority supports the actions of the Committee in this section.

**650*389 SECTION 9007–RECOVERING THE COST FOR GOVERNMENT SERVICES

The Minority supports the actions of the Committee in this section so long as safeguards are implemented to ensure that actions taken by the Secretaries are fair and reasonable.

SECTION 9008–UNFUNDED LIABILITIES OF THE FEDERAL GOVERNMENT

The Minority does not oppose this section.

Raker Act amendments

In 1913, Congress passed the Raker Act which authorized the City of San Francisco to build water and power facilities within the boundary of Yosemite National Park. Lake Eleanor and Hetch Hetchy Reservoirs were subsequently constructed within the park. Construction of Hetch Hetchy was particularly controversial because it resulted in the impoundment of the Grand Canyon of the Toulumne River, believed by some to be even more spectacular than Yosemite Valley.

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Subsequent water storage and power projects were paid for with non-federal funds and all projects have now been fully capitalized. For the privilege of occupying space on federal lands and use of waters originating entirely on lands reserved for park and forest purposes prior to passage of the Raker Act, the City of San Francisco is required to pay to the Federal government $30,000 per year. The payment has been fixed at this level since 1933. However, it should be noted that the Raker Act specifically recognized the prerogative of Congress to make future adjustments in the fee.

In addition to payments under the Raker Act, the City has provided additional funds to the park for approximately the last 10 years to help protect water quality by controlling trail erosion and mitigating other human activities in the watershed. It appears that the City has been funding this mitigation program in order to avoid the costs associated with construction of a water filtration plant, which could be required if water quality is not protected. Over the last 6 years, the City has paid an average of $850,000 for these purposes to Yosemite National Park.

During the period 1983 through 1992 (the most recent period for which information is currently available), the City of San Francisco received about $82 million annually from sale of water and power from this project. During that same period, the project generated an average of $27 million annually in profit to the City.

In Committee, the Minority proposed to replace the existing annual payment of $30,000 with $20,000,000. This figure reflects about $^2/_3$ of the profits which the City of San Francisco makes from the project on an annual basis. This proposal would generate $100 million over the 5-year budget period. Under the Minority proposal the additional funds generated would be spent in accord with existing law which requires funds be spent to support operations of Yosemite National Park and other national parks in the State of California. The projected cost to operate Yosemite in 1994 will be about $17 million.

The proposal was contained in a Minority substitute offered by Mr. Young (R-AK) and directly as an amendment offered by Mr. Allard (R-CO) as a substitute for higher taxes on water users ****651*390** throughout the west. Both amendments were defeated but there was clearly strong bipartisan support for doing away with the current system. We believe that the current system is an indefensible subsidy to the city of San Francisco that cannot be justified in the current fiscal environment. We would hope that this issue could be directly addressed by the whole house.

Don Young.
Richard H. Baker.
James V. Hansen.
Elton Gallegly.
Scott McInnis.
John T. Doolittle.
Jay Dickey.
Bob Smith.
Barbara F. Vucanovich.
John J. Duncan, Jr.
Richard Pombo.
Craig Thomas.
Ken Calvert.
Wayne Allard.

***391** ADDITIONAL DISSENTING VIEWS BY HON. CRAIG THOMAS OF WYOMING

SECTION 9006–NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES

While I have no objection to charging reasonable user fees reflective of the value of services provided by government agencies, I have concerns about the fairness of the level of fees charged by the NRC.

In particular, last year the NRC charged a Wyoming highway construction firm $1,200 for a half-hour inspection of its 3440 Troxler Gauge, $2,250 as a “materials fee” and $380 to process an address change! That’s a total of $3,830 billed to a small construction company for licensing of a useful–but not extensively used–gauge.

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The law requires the NRC to collect fees to "cover the Commission's costs in providing any ... service or thing of value." [42 U.S.C.S. 2214(b).] The law also, however, requires the NRC to establish a schedule "fairly and equitably allocating the aggregate amount of charges ... among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services ... ." [42 U.S.C.S. 2214(c)(3), emphasis added.]

When the mere act of processing a change of address costs $380, and the time of an NRC inspector comes to $2,400 per hour spent on-site, that goes far beyond fair and equitable, doesn't appear to "have a reasonable relationship to the cost of providing regulatory services," and I cannot support that. If, on the other hand, these fees truly do represent the NRC's costs for providing the services, then it is time to investigate just how the NRC is spending taxpayer funds.

****652** The NRC should reconsider the application of this policy to more closely reflect the mandate of fairness, equity and reasonable relationship to cost. I also strongly encourage the Committee to closely monitor this situation.

Craig Thomas.

***393** TITLE X–COMMITTEE ON POST OFFICE AND CIVIL SERVICE

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC, May 17, 1993.

Martin Olav Sabo,
Chairman, Committee on the Budget,
O'Neill House Office Building, Washington, DC.

Dear Mr. Chairman: Transmitted herewith are the recommendations of the Committee on Post Office and Civil Service submitted in accordance with the reconciliation instructions contained in H.Con.Res. 64 (Concurrent Resolution on the Budget for Fiscal Years 1994–1998). These recommendations were approved by the Committee on May 13, 1993, by a record vote of 17 yeas to 5 nays, with 18 Members present.

Also transmitted herewith for inclusion in the Budget Committee's report are a section analysis, cost savings estimates of the Congressional Budget Office and a Ramseyer.

Under the provisions of the budget resolution, our Committee was instructed to cut direct spending by $10.6 billion over fiscal years 1994 through 1998 and to reduce authorizations (discretionary spending) by $28.7 billion over the same five fiscal years. While the Committee's recommendations fully comply with those instructions, I must advise you that the Committee's budget reductions were not achieved without a great deal of effort and anguish.

Given this Committee's limited jurisdiction over entitlement programs, the budget resolution put the Committee in a very difficult and unenviable position. Only two other Committees of the House were required to produce more savings.

Most of the Members of this Committee truly believe that Federal employees and retirees are being asked to bear a disproportionate share of the sacrifices that all Americans are being asked to make in order to reduce the budget deficit. Nevertheless, the Committee did not duck its responsibility under the budget resolution. Rather, the Committee worked very hard to ensure that the required spending reductions were made in the fairest and most responsible manner.

Mr. Chairman, every Member of Congress and every citizen of this country should be fully aware of the pain and sacrifice that Federal employees and retirees will bear under this reconciliation legislation. I know of no other group in this country that is being asked to suffer a greater reduction in their standard of living.

At the request of the Honorable Dan Glickman, Chairman of the Permanent Select Committee on Intelligence, I am attaching a copy of this letter of May 14, 1993, concerning the effects of our Committee's ****653*394** recommendations on the Central Intelligence Agency Retirement Act.

Sincerely,

William L. Clay, Chairman.

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House of Representatives,
Permanent Select Committee on Intelligence,
Washington, DC, May 14, 1993.

Hon. William Clay,
Chairman, Committee on Post Office and Civil Service,
Cannon House Office Building, Washington, DC.

Dear Mr. Chairman: The legislative proposal adopted by the Committee on Post Office and Civil Service on May 13 in response to reconciliation instructions set forth in the conference report to accompany H.Con.Res. 64, the concurrent resolution on the budget for fiscal year 1994, delays the effective date of the cost-of-living increases scheduled to take effect, during fiscal year 1994, 1995, and 1996, under Section 291 of the Central Intelligence Agency Retirement Act (CIARA) (50 U.S.C. 2131). In addition, the legislative proposal amends Section 294(a) of CIARA to permanently eliminate the alternative-form-of-annuity option except for individuals with critical medical conditions.

The Central Intelligence Agency Retirement Act is under the jurisdiction of the Permanent Select Committee on Intelligence. The Committee supports the maintenance of conformity between the Civil Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System. I do not consider that the action taken by the Post Office and Civil Service Committee constitutes an effort to affect the Intelligence Committee's jurisdiction over CIARA. I therefore do not object to the action. In the event that the Senate treatment of CIARA is different than the House treatment, I request that the Permanent Select Committee on Intelligence be represented on the conference committee.

I also request that this letter be included in the legislative proposal submitted to the Budget Committee in response to reconciliation instructions.

Sincerely

Dan Glickman, Chairman.

SECTION ANALYSIS

(TITLE X–COMMITTEE ON POST OFFICE AND CIVIL SERVICE)

Subtitle A–Civil Service

Section 10001. Delay in retirement cost-of-living adjustments

Section 10001 delays by three months the cost-of-living adjustments (COLAs) that are scheduled to take effect under certain Federal employee retirement systems during fiscal years 1994, 1995, and 1996. Under existing laws, COLAs are effective December 1 of each year. Under this provision, COLAs would not take effect until March 1 in fiscal years 1994, 1995, and 1996. The COLA delay applies to all annuities payable under the Civil Service Retirement ****654*395** System, the Federal Employees' Retirement System, the Foreign Service retirement systems, and the CIA retirement systems. The provisions of section 10001 affect only the effective date of the COLAs, and nothing in section 10001 should be construed to affect the amount of an adjustment or any individual's eligibility for an annuity increase.

Section 10002. Repeal of lump-sum retirement option

Section 10002 amends the alternative-form-of-annuity provisions under the Civil Service Retirement System, the Federal Employees' Retirement System, and the retirement systems applicable to employees of the Foreign Service and the Central Intelligence Agency. The lump-sum option will remain in effect for employees who have a life-threatening affliction or other critical medical condition, but will be terminated for all other employees, effective January 1, 1994.

As originally enacted, the lump-sum retirement option (alternative-form-of-annuity provision) allowed all retiring employees, except those retiring under disability, to elect a lump-sum refund of their retirement contributions in exchange for a permanently reduced annuity. The lump-sum option was suspended for 5 years under the Omnibus Budget Reconciliation

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Act of 1990 (Public Law 101–508) for all employees except certain involuntary retirees and those having critical medical conditions.

The amendments made by section 10002 take effect on January 1, 1994, and will apply with respect to any annuity commencing on or after that date.

Section 10003. Pay limitations

Subsection (a)(1) provides that the pay adjustment (2.2 percent) that is scheduled to take effect in 1994 under section 5303 of title 5, United States Code, which covers General Schedule employees, Foreign Service employees, and employees of the Veterans Health Administration, shall not take effect. Under existing law, the annual pay adjustment provisions of certain other pay systems, such as those covering Members of Congress (2 U.S.C. 31(2)), Federal judges (28 U.S.C. 461(a)), and the Executive Schedule (5 U.S.C. 5318), are linked to adjustments under section 5303 of title 5. Since no pay adjustment will take effect in 1994 under section 5303, there will be no adjustment in 1994 in the rates of pay under these other pay systems.

In addition, subsection (a)(2) provides that no other general pay adjustment which is similar to the adjustments under section 5303 of title 5 shall take effect in 1994 with respect to any civilian officer or employee in the executive branch. The effect of this provision is to extend the 1994 pay freeze to other pay systems in the executive branch, such as those applicable to prevailing rate employees, U.S. Attorneys and employees of the various bank regulatory agencies.

The freeze on pay adjustments in 1994 is not intended to affect individualized adjustments, such as promotions or step increases, and will not apply to any pay adjustment which is required under the terms of a contract. Also, the freeze will not apply to any alien ****655*396** or noncitizen of the United States who occupies a position outside the United States.

Subsection (b)(1) amends section 5303(a) of title 5, United States Code, to reduce by one percent the annual pay adjustments scheduled to take effect under section 5303(a) in calendar years 1995, 1996, and 1997. Under existing law, the annual pay adjustment is based on the Employment Cost Index (ECI) minus one-half of one percent. Under this amendment, the pay adjustments in 1995, 1996, and 1997 will be based on the ECI minus one and one-half percent.

Subsection (b)(2) makes a similar change in the annual pay adjustment provisions applicable to Members of Congress (2 U.S.C. 31(2)), Federal judges (28 U.S.C. 461(a)), and positions under the Executive Schedule (5 U.S.C. 5318). Accordingly, the annual pay adjustments under these pay systems in 1995, 1996, and 1997 will be based on the ECI minus one and one-half percent.

Section 10004. Locality-based comparability payments

Subsection (a)(1) amends section 5304(d)(2) of title 5, United States Code, to change the effective date of locality-based comparability payments under section 5304 from the first pay period commencing on or after January 1 of the applicable year to the first pay period commencing on or after July 1 of the applicable year. The initial adjustment under this section would take effect in July of 1994.

Subsection (a)(2) amends section 5304 of title 5, United States Code, relating to locality-based comparability payments, by adding a new subsection (i) establishing limitations on the total amounts payable for locality payments between July 1, 1994 and September 30, 1998. Under the existing provisions of section 5304, employees who work in localities having a pay disparity greater than 5 percent are entitled to receive an adjustment in 1994 of at least 20 percent of the amount needed to reduce the pay disparity to 5 percent. In each succeeding year through the year 2002, employees are entitled to adjustments of at least 10 percent of the existing disparity until the disparity is reduced to 5 percent.

Under the new subsection (i) of section 5304, the total amount payable for locality pay under section 5304 may not exceed $1.8 billion between July 1, 1994, and June 30, 1995; $2.5 billion between July 1, 1995, and June 30, 1996; $3.3 billion between July 1, 1996, and June 30, 1997; $4.2 billion between July 1, 1997, and June 30, 1998; and $1.747 billion between July 1, 1998, and September 30, 1998. The President is authorized to specify locality payments which are less than the minimum amounts which would otherwise be required under section 5304 (a)(3) if such action is necessary in order to

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comply with the limitations established under the new subsection (i) of section 5304. The new subsection (i) also requires the President's pay agent to include in its report to the President the methodology for making any of the estimates required under the new subsection (i) and requires the President to include in his report to the Congress under section 5304 (d)(3) specific information as to how and why any authority was exercised under the provisions of the new subsection (i).

****656*397** Subsection (b) of section 10004 further amends section 5303(a) of title 5, United States Code, by changing the effective date of the annual pay adjustments (based on the ECI) under section 5303 from the first pay period beginning on or after January 1 of each calendar year to the first pay period beginning on or after July 1 of each calendar year. This amendment is effective during the period beginning on January 1, 1995, and ending on December 31, 2003. This amendment will also affect the effective dates of annual pay adjustments under the provisions of other pay systems that are linked by law to adjustments under section 5303 of title 5. For example, see 2 U.S.C. 31(2), 28 U.S.C. 461(a), and 5 U.S.C. 5318.

Subsection (c) of section 10004 repeals section 6304(f) of title 5, United States Code, which excludes senior executives from the general limitation on the accumulation of annual leave. Under section 6304 (a) and (b) of title 5, employees generally may not accumulate more than 30 days of annual leave or, if stationed outside the United States, 45 days of annual leave. Members of the Senior Executive Service, the Senior Foreign Service, the Defense Intelligence SES, the Senior Cryptologic Executive Service, and the FBI/DEA Senior Executive Service are exempt from these general limitations. The repeal of the exclusion for senior executives is effective January 1, 1994, but subsection (c) contains a savings provision for senior executives who have more than 30 days of annual leave or 45 days, if applicable, to their credit as of December 31, 1993. Under the savings provision, the annual leave balance which a senior executive has as of December 31, 1993, becomes the executive's personal limitation for purposes of section 6304(a) or (b) of title 5, so long as the individual remains continuously employed in any senior executive position.

Subsection (d) of section 10004 provides that no cash award may be awarded during the period beginning October 1, 1993, and ending on September 30, 1998. For the purpose of this prohibition, "cash award" means any cash award, performance award, rank, or other form of recognition entitling the employee to any monetary payment under subchapter I of chapter 45 of title 5, United States Code (awards for superior accomplishments, performance-based cash awards, and ranks in the Senior Executive Service); section 5384 of title 5 (performance awards in the SES); and sections 5406 and 5407 of title 5 (performance awards and cash awards under the Performance Management and Recognition System).

Subsection (e) of section 10004 establishes limitations on the average total number of civilian employees in the executive branch in fiscal years 1994 through 1998. The limitations apply to all civilian employees within the executive branch except employees of the U.S. Postal Service or the Postal Rate Commission. The average total number of civilian employees in the executive branch, to be determined on a "full-time equivalent" basis, may not exceed 2,095,200 in fiscal year 1994; 2,044,100 in fiscal year 1995; 2,010,100 in fiscal year 1996; 1,998,500 in fiscal year 1997; or 1,996,700 in fiscal year 1998. Subsection (e) further provides that, to the extent practicable, any reductions that are necessary to achieve compliance with any fiscal year employment limitation shall be effected through attrition or other voluntary measures. It ****657*398** is the intent of the Committee that reductions in force should be avoided to the maximum extent possible.

Subsection (f) of section 10004 requires the Director of the Administrative Office of the United States Courts to take any action necessary to ensure that the purposes of section 10003(a) (elimination of the 1994 pay adjustment); section 10003(b) (reduction in annual pay adjustments in 1995, 1996, and 1997); section 10004(a)(1) (July 1 effective date for locality-based adjustments); and section 10004(b) (July 1 effective date for annual pay adjustments) are carried out with respect to employees who are under the separate personnel management system of the Administrative Office of U.S. Courts.

Section 10005. Medicare Part B Proposal

Section 10005 applies the Medicare part B limiting charges for physicians' services to retirees enrolled in the Federal Employees Health Benefits Program (FEHBP) who are 65 years of age and older and do not participate in Medicare part B. The Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, Sec. 7002 (f)(1), Nov. 5, 1990) amended the FEHBP law effective January 1, 1992, to require FEHBP plans which pay for covered health care services on a fee-for-service basis, to apply the Medicare part A limitations on payments for hospital charges when FEHB benefits for the same services are provided to retired FEHB enrollees who are age 65 or older and are ineligible for Medicare (5 U.S.C. 8904(b)). Section 10005 would now apply the part B fee schedule limits for physician services in the same manner.

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Subsection 10005(a)(1) would redesignate current provisions for FEHB/Medicare part A coordination of 5 U.S.C. 8904(b)(1) as 8904(b)(1)(A) and would add subparagraph (b)(1)(B) providing for FEHB/Medicare part B coordination to parallel current provisions with respect to Medicare part A. It would also add subparagraph (b)(1)(C) mandating exclusion of providers from the FEHB Program for violations of Sec. 8904(b) which have resulted in exclusion from Medicare participation. Under subparagraph (b)(1)(B), the Office of Personnel Management (OPM) would be required to notify any physician who is in violation of the law of the potential consequences and, as in the case of Medicare part A, to refer those guilty of repeated violations to the Department of Health and Human Services (DHHS) for possible sanction under the Medicare law.

Subsection 10005(a)(2) would amend current FEHB law at 5 U.S.C. 8904(b)(3)(B) to expand authority for DHHS and OPM to exchange necessary information for administration of that section to include Medicare fee schedule amounts and limiting charge information applicable to physicians and the identity of Medicare participating physicians.

Subsection 10005(a)(3) would amend current FEHB law at 5 U.S.C. 8904(b) to add new paragraph (4) that requires OPM to certify by July 31st preceding the beginning of calendar year 1995 and every year thereafter, that an adequate arrangement with DHHS is in effect to ensure that, before the beginning of the contract year, necessary information for purposes of subsection 8904(b)(1)(B), including Medicare Program Information under section 8904(b)(3)(B), ****658*399** will be available to FEHB insurers and affected Medicare providers and that enforcement procedures, including protections against overcharging beneficiaries, will be in place.

Subsection 10005(b) specifies that the amendments shall be effective on and after January 1, 1995.

Section 10006. Extension of Proxy Premium Law

Section 10006 temporarily extends the method for determining the Government contribution under the FEHBP through contract year 1998 in the absence of a Government-wide indemnity benefit plan. Current FEHBP law at 5 U.S.C. 8906 sets the government premium contribution on the basis of the premiums of six plans specified in statute (the “Big 6”). When the government-wide indemnity benefit plan (Aetna) withdrew from the FEHBP in 1989, Congress established in Public Law 101–76 a proxy premium formula for determining government premium contributions for contract years 1990 and 1991. Congress later extended it through contract year 1993. It provided for keeping Aetna’s 1989 premium in the formula by annually updating it by the average percentage change in the premium of the remaining five plans.

Section 10006(a) would amend subsection (a)(1) of Public Law 101–76 (5 U.S.C. 8906 note) by striking “1993” and inserting “1998”. Section 10006(b) provides that it is the sense of the Congress that the temporary extension of the proxy premium formula through contract year 1998 should not be considered to reflect any view of the appropriateness, merits, or timing, or any other aspect of any comprehensive health care reform legislation.

Subtitle B–Postal Service

Section 10101. Payments to be made by the United States Postal Service

Section 10101 requires the Postal Service to make certain payments for past retiree COLAs and health benefits. Subsection (a) requires a payment, over and above any other payments required by law, of $693 million to the Civil Service Retirement and Disability Fund. That payment must be made in three equal annual installments beginning in fiscal year 1995. Subsection (b) requires a payment, over and above any other payments required by law, of $348 million to the Employees Health Benefits Fund. This payment also will be made in three equal annual installments beginning in fiscal year 1995.

The Committee believed that the 1990 Omnibus Budget Reconciliation Act represented the final chapter in Postal Service payments for past retiree COLAs and health benefits. The payments in section 10101 should be that final chapter. With these additional payments the Committee believes the Postal Service will have paid its debt completely.

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Subtitle C–Revenue Forgone Reform

Section 10201. Short title; Table of contents

Section 10201 provides the short title and the table of contents for the “Revenue Forgone Reform Act”.

****659*400** Section 10202. References

Section 10202 defines the use of legal references in the subtitle.

Section 10203. Repeal of authorization of appropriations for mail sent at reduced rates

Section 10203 repeals revenue forgone appropriations authorization for all reduced rate mail. The authorization for revenue forgone appropriations will be limited to free-for-the-blind and overseas voting rights mail. Nonprofit third-class mail, library rate mail, and nonprofit, in-county, classroom and science of agriculture second-class mail will no longer be covered by revenue forgone appropriations which reimbursed the Postal Service for the overhead costs contribution for those reduced rate mailers.

Section 10204. Establishing reduced rates of postage

Section 10204 creates additional criteria for setting rates for reduced rate mail (nonprofit third-class, library rate, and nonprofit, in-county, classroom and science of agriculture second-class). The Committee intends that the new criteria in this section shall supplement the general ratemaking standards of subchapter II of chapter 36 of title 39 which continue to apply to reduced rate mail. Subsection (a)(1) establishes permanent changes in the development and recommendations of reduced rate mail by the Postal Rate Commission and in the setting of rates by the Governors of the Postal Service. Rates for reduced rate mail will include, as is current law, the direct and indirect costs attributable to that mail. In addition, those rates will now include a contribution to Postal Service overhead which is equal to one-half of the contribution of the corresponding commercial rate. Rate increases caused by this subsection for reduced rate mail will be phased in over six years. The Postal Service is given the authority to temporarily raise reduced rates to meet the phasing schedule.

Section 10204 also would charge nonprofit and classroom second-class publications commercial rates for the advertising portion of the publication if the publication contains more than 10 percent advertising. The section does not redefine advertising. Science of agriculture rate preference is established as 75 percent of the corresponding commercial rate.

The Governors and the Postal Rate Commission in a subchapter II, chapter 36 rate proceeding must establish rates for reduced rate mail without considering the phasing schedule. Since the Postal Service will be reimbursed through appropriations for the costs of phasing reduced rates, this avoids any potential for double recovery by the Postal Service for the costs of phasing reduced rates.

Subsection (a)(2) gives the Postal Service authority to temporarily raise reduced rates in accordance with the six year phasing schedule. Temporary rates may not extend beyond September 30, 1998.

Subsection (b) authorizes a $29 million appropriation per year through 2035 to the Postal Service to reimburse it for losses resulting from the phasing of reduced rates in Subsection (a) and insufficient appropriations under section 2401(c) of title 39, before amendment by section 10203 above, for fiscal years 1991, 1992 and 1993. The Postal Service may seek rate changes under subchapter II, ****660*401** chapter 36 (except section 3627) for any failure of appropriations authorized by Subsection (b).

Section 10205. Eligibility of certain mailings for reduced rates of postage

Section 10205 places additional restrictions on the uses of nonprofit third-class mail. Subsection (a) restricts from nonprofit

third-class mail any promotion, offer, or advertisement of any product or service which is not substantially related to a purpose which is a basis for the mailing organization's eligibility for reduced rates. The definition for not substantially related is found in subsections (a) and (c) of section 513 of the Internal Revenue Code. The Postal Service has authority to promulgate regulations concerning the substantially related test. The Committee intends that the Postal Service shall apply the test in a manner strictly consistent with standards established and to be established by the Internal Revenue Service and the courts pursuant to section 513 of the Internal Revenue Code.

Section 10205 also codifies in law a Postal Service regulation concerning cooperative mailings. By ratifying the regulation in statute the Committee confirms the authority of the Postal Service to adopt a cooperative mailing test. The Committee does not intend to broaden or tighten existing practices and restriction of the Postal Service with regard to cooperative mailings.

Subsection (b) eliminates the use of nonprofit third-class mail to send products except for low cost articles as defined by the Internal Revenue Code and items received by the mailing organization as a gift or contribution.

Subsection (c) authorizes the Postal Service to establish procedures to carry out the eligibility reforms and to certify and verify compliance. The Committee intends that the Postal Service shall administer the new eligibility reforms in a manner that does not unduly jeopardize continued access to the postal system by reduced rate mailers who are seeking to comply with the new standards. The Postal Service may well establish a phased-in enforcement policy, including use of its authority to settle any deficiency claim against a nonprofit mailer.

Subsection (d) makes the effective date of these eligibility reforms, October 1, 1993. The reforms are applicable only to those mailings entered into the mailstream on or after that date. They are not applicable to mail entered prior to October 1 even if delivered on or after that date.

Section 10206. Provisions relating to rates for books and certain other materials

Section 10206 eliminates any commercial, for-profit entity from the use of library rate mail. Individuals having a financial interest in the matter mailed also may not use library rate mail. The section retains eligibility for library rate mail to libraries for interlibrary loans, for sending and receiving books, tapes, etc. from patrons and for sending and receiving books, tapes, etc. from schools and nonprofit organizations.

****661*402** Section 10207. Sense of Congress

Section 10207 expresses a sense of Congress that any statutory expansion of reduced rates enacted after fiscal year 1994 should include funding to prevent any losses to the Postal Service or any rate increases to other mailers.

Section 10208. Technical corrections

Section 10208 corrects technical errors in title 39, United State Code.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 17, 1993.

Hon. William D. Clay,
Chairman, Committee on Post Office and Civil Service
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed revised cost estimate for the Reconciliation recommendations of the Committee on Post Office and Civil Service, as transmitted to the House Committee on the Budget, May 14, 1993. The enclosed table contains a revision to one of the footnotes in the enclosure to our previous letter of May 14.

The estimates included in the attached table represent the 1994–1998 effects on the federal budget and on the budget

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resolution baseline of the Committee's legislative proposals affecting spending. CBO understands that the Committee on the Budget will be responsible for interpreting how savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Paul Cullinan and Wayne Boyington for civil service and retirement issues (226–2820), Leslie Griffin for federal pay reform (226–2880), Amy Plapp for Department of Defense civilian employees (226–2840), and Mickey Buhl for Postal Service issues (226–2860).

Sincerely,

Robert D. Reischauer, Director.

Enclosure.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***404** CHANGES IN EXISTING LAW MADE BY TITLE X OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III–EMPLOYEES

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Subpart D–Pay and Allowances

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CHAPTER 53–PAY RATES AND SYSTEMS

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SUBCHAPTER I–PAY COMPARABILITY SYSTEM

* * * * * * *

S 5303. Annual adjustments to pay schedules

(a)(1) Effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year, the rates of basic pay for each statutory pay system shall be increased by the percentage (rounded to the nearest one-tenth of 1 percent) equal to one-half of 1 percentage point less than the percentage by which the ECI for the base quarter of the year before the preceding calendar year exceeds the ECI for the base quarter of the second year before the preceding calendar year (if at all).

(2) Notwithstanding section 633 of the Treasury, Postal Service and General Government Appropriations Act, 1991 or any other provision of law, for purposes of any adjustment scheduled to take effect under this section in 1995, 1996, or 1997, paragraph (1) shall be deemed to be amended by striking "equal to" through "less than" and inserting "equal to one and one-half percentage points less than".

(3) Effective for the period beginning on January 1, 1995, and ending on December 31, 2003, paragraph (1) shall be deemed to be amended by striking "January 1" and inserting "July 1".

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***405**S 5304. Locality-based comparability payments

(a) ***

* * * * * * *

(d) In order to carry out this section, the President shall–

(1) ***

(2) after considering the report of his agent (including the views and recommendations referred to in subsection (e)(2)(C), provide for or adjust comparability payments in conformance with applicable requirements of this section, effective as of the beginning of the first applicable pay period commencing on or after [January 1] July 1 of the applicable year; and

* * * * * * *

(i)(1) Notwithstanding any other provision of this section, comparability payments may not be established or adjusted under this section in a manner that would cause the resulting estimated total amount payable under this section during the period which–

(A) begins on July 1, 1994, and ends on June 30, 1995, to exceed $1,800,000,000;

(B) begins on July 1, 1995, and ends on June 30, 1996, to exceed $2,500,000,000;

(C) begins on July 1, 1996, and ends on June 30, 1997, to exceed $3,300,000,000;

(D) begins on July 1, 1997, and ends on June 30, 1998, to exceed $4,200,000,000; or

(E) begins on July 1, 1998, and ends on September 30, 1998, to exceed $1,747,000,000.

(2) If necessary in order to achieve compliance with any of the respective limitations under paragraph (1), the President may, in carrying out subsection (d)(2), specify levels of comparability payments less than the minimum which would otherwise be required under subsection (a)(3).

(3) The pay agent shall develop and include in the appropriate reports under subsection (d)(1) the methodology for making any estimates under this subsection, and any such estimate shall be made in accordance with the methodology so included in the then most recent report.

(4) Whenever any authority under this subsection is exercised, the President shall so indicate in his next report under subsection (d)(3), including specific information as to how such authority was exercised and the reasons why it was so exercised.

[(i)] (j) The Office of Personnel Management may prescribe regulations, consistent with the provisions of this section, governing the payment of comparability payments to employees.

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Subpart E–Attendance and Leave

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CHAPTER 63–LEAVE

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***406** SUBCHAPTER I–ANNUAL AND SICK LEAVE

* * * * * * *

S 6304. Annual leave; accumulation

(a) Except as provided by subsections (b), [(d), (e), (f), and (g)] (d) and (e) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full bi-weekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

* * * * * * *

[(f) Annual leave accrued shall not be subject to the limitation on accumulation otherwise imposed by this section if such leave is accrued by an individual while serving in a position in–

[(1) the Senior Executive Service;

[(2) the Senior Foreign Service;

[(3) the Defense Intelligence Senior Executive Service;

[(4) the Senior Cryptologic Executive Service; or

[(5) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.]

* * * * * * *

Subpart G–Insurance and Annuities

* * * * * * *

CHAPTER 83–RETIREMENT

* * * * * * *

SUBCHAPTER III–CIVIL SERVICE RETIREMENT

* * * * * * *

S 8343a. Alternative forms of annuities

(a) The Office of Personnel Management shall prescribe regulations under which [an employee or Member may,] any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

* * * * * * *

[(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

[(2) Nothing in this subsection shall prevent an election from being made by any individual–

***407** [(A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding–

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[(i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

[(ii) the Vice President;

[(iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

[(iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at

or above the rate of level V of the Executive Schedule;

[(v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

[(vi) any individual holding a position which is excepted from the competitive service because of its confidential policy-determining, policy-making, or policy-advocating character; or

[(B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

[(3) This subsection shall cease to be effective as of October 1, 1995.]

* * * * * * *

CHAPTER 84–FEDERAL EMPLOYEES' RETIREMENT SYSTEM

* * * * * * *

SUBCHAPTER II–BASIC ANNUITY

* * * * * * *

S 8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which [an employee or Member may,] any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

* * * * * * *

[(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

[(2) Nothing in this subsection shall prevent an election from being made by any individual–

***408** [(A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding–

[(i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

[(ii) the vice President;

[(iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

[(iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1),

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106(a)(1), or 107 (a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

[(v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

[(vi) any individual holding a position which is excepted from the competitive service because of its confidential policy-determining, policy-making, or policy-advocating character; or

[(B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

[(3) This subsection shall cease to be effective as of October 1, 1995.]

* * * * * * *

CHAPTER 89–HEALTH INSURANCE

* * * * * * *

S 8904. Types of benefits

(a) ***

(b)(1)(A) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office ***409** of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w–4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w–4(a)).

(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) with respect to services described in clause (i) provided to enrollees described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause

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on a repeated basis and the Secretary of Health and Human Services may invoke appropriate sanctions in accordance with sections 1128A(a) and section 1848(g)(1) of such Act (42 U.S.C. 1320a–7a(a), 1395w–4(g)(1)) and applicable regulations.

(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.

* * * * * * *

(3)(A) ***

(B) For purposes of this paragraph, the term "Medicare program information" includes (i) the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w–4) and the identity ***410** of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h)).

(4) The Director of the Office of Personnel Management shall certify, before the first day of the fifth month that begins before each contract year, that there is in effect an arrangement with the Secretary of Health and Human Services under which, before the beginning of the contract year–

(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).

* * * * * * *

SECTION 807 OF THE FOREIGN SERVICE ACT OF 1980

Sec. 807. Payment of Annuity.–(a) ***

* * * * * * *

(e)(1) The Secretary of State shall prescribe regulations under which [a participant may,] any participant who has a life-threatening affiliation or other critical medical condition may, at the time of retiring under this subchapter (other than section 808), elect annuity benefits under this section instead of any other benefits under this subchapter (including survivor benefits) based on the service of the participant.

* * * * * * *

SECTION 294 OF CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT

SEC. 294. ALTERNATIVE FORMS OF ANNUITIES.

(a) Authority for Alternative Form of Annuity.–The Director shall prescribe regulations under which [a participant may,] any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this title (other than under section 231), elect annuity benefits under this section instead of any other benefits under this title (including any survivor benefits under this title) based on the service of the participant creditable under this title.

* * * * * * *

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***411** SECTION 704 OF THE ETHICS REFORM ACT OF 1989

SEC. 704. REVISION IN METHOD BY WHICH ANNUAL PAY ADJUSTMENTS FOR CERTAIN EXECUTIVE, LEGISLATIVE, AND JUDICIAL POSITIONS ARE TO BE MADE.

(a) Percent Change in the Employment Cost Index.–

(1) Method for computing percent change in the eci.–

(A) ***

* * * * * * *

(C) Special rule.–For purposes of any pay adjustment scheduled to take effect in 1995, 1996, or 1997, subparagraph (B) shall be deemed to be amended by striking "one-half of 1 percent" and inserting "one and one-half percent".

* * * * * * *

THE ACT OF AUGUST 11, 1989

AN ACT Relating to the method by which Government contributions to the Federal employees health benefits program shall be computed for 1990 or 1991 if no Government-wide indemnity benefit plan participates in that year.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through [1993] 1998 (inclusive), in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year shall be deemed to be the subscription charges which–

(A) ***

* * * * * * *

TITLE 39, UNITED STATES CODE

PART I–GENERAL

* * * * * * *

CHAPTER 4–GENERAL AUTHORITY

* * * * * * *

S 410. Application of other laws

(a) ***

(b) The following provisions shall apply to the Postal Service:

(1) ***

* * * * * * *

(8) the provisions of the Act of August 12, 1968 (42 U.S.C. 4151–4156); [and]

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(9) [Chapter] chapter 39 of title 31[.]; and

***412** [(9)] (10) the provisions of section 8E of the Inspector General Act of 1978.

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PART III–MODERNIZATION AND FISCAL ADMINISTRATION

* * * * * * *

CHAPTER 24–APPROPRIATIONS AND ANNUAL REPORT

* * * * * * *

S 2401. Appropriations

(a) ***

* * * * * * *

(c) There are authorized to be appropriated to the Postal Service each year a sum determined by the Postal Service to be equal to the difference between the revenues the Postal Service would have received [if sections 3217, 3403–3406, and 3626(a)–(h) and (j)–(k) of this title, had not been enacted] if sections 3217 and 3403–3406 had not been enacted and the estimated revenues to be received on mail carried under such sections [and Acts]. In requesting an appropriation under this subsection for a fiscal year, the Postal Service shall [(i)] include an amount to reconcile sums authorized to be appropriated for prior fiscal years on the basis of estimated mail volume with sums which would have been authorized to be appropriated if based on the final audited mail [volume; and (ii) calculate the sums requested in respect of mail under former sections 4452(b) and 4452(c) of this title as though all such mail consisted of letter shaped pieces, as such pieces are defined in the then effective classification and rate schedules.] volume.

[(d)(1) There is authorized to be appropriated to the Postal Service for fiscal year 1976 and for the period beginning July 1, 1976, and ending September 30, 1976, the amount of $500,000,000 to be applied against the accumulated operating indebtedness of the Postal Service as of September 30, 1976.

[(2) There is authorized to be appropriated to the Postal Service for fiscal year 1977 the amount of $500,000,000 to be applied against the accumulated operating indebtedness of the Postal Service as of September 30, 1977.

[(e) During the period beginning on the date of the appropriation of the funds under subsection (d)(1) and ending on the date on which the Commission on Postal Service is required to transmit the final report required under section 7(f)(1) of the Postal Reorganization Act Amendments of 1976 to the President and each House of Congress, the Postal Service shall not–

[(1) have in effect any permanent or temporary rate of postage or fee for postal services exceeding the rates and fees in effect on the date of enactment of the Postal Reorganization Act Amendments of 1976;

[(2) provide levels and types of postal services which are less than the levels and types of services provided on July 1, 1976;

***413** [(3) close any post office where 35 or more families regularly receive their mail and which was providing service on July 1, 1976; or

[(4) close any post office where fewer than 35 families receive their mail and which was providing service on July 1, 1976, unless the Postal Service receives the written consent of at least 60 percent of the regular patrons of such office who are at least 18 years of age.

[(f) During the period beginning on the date of the appropriation of the funds under subsection (d)(1) and ending on the date on which the Commission on Postal Service is required to transmit the final report required under section 7(f)(1) of the Postal Reorganization Act Amendments of 1976 to the President and each House of Congress, the Postal Service shall

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provide door delivery or curbline delivery to all permanent residential addresses (other than apartment building addresses) to which service is begun on or after the date of enactment of the Postal Reorganization Act Amendments of 1976.]

(d) As reimbursement to the Postal Service for losses which it incurred as a result of insufficient amounts appropriated under section 2401(c) for fiscal years 1991 through 1993, and to compensate for the additional revenues it is estimated the Postal Service would have received under the provisions of section 3626(a), for the period beginning on October 1, 1993, and ending on September 30, 1998, if the fraction specified in subclause (VI) of section 3626(a)(2)(B)(ii) were applied with respect to such period (instead of the respective fractions specified in subclauses (I) through (V) thereof), there are authorized to be appropriated to the Postal Service $29,000,000 for each of fiscal years 1994 through 2035.

[(g)] (e) The Postal Service shall present to the Committees on Post Office and Civil Service and the Committees on Appropriations of the Senate and the House of Representatives, at the same time it submits its annual budget under section 2009 of this title, sufficient copies of the budget of the Postal Service for the fiscal year for which funds are requested to be appropriated, and a comprehensive statement relating to the following matters:

(1) the plans, policies, and procedures of the Postal Service designed to comply with all of the provisions of section 101 of this title;

* * * * * * *

[(h)] (f) The failure of the President to request the appropriation of any part of the funds authorized by this section may not be deemed a failure of appropriations. [The failure of the President to request the appropriation of any part of the funds authorized by this section shall not relieve the Postal Service from the responsibility to comply with the provisions of subsections (e) and (f) of this section.]

[(i)] (g) The rates established under chapter 36 of this title for zone-rated parcels formerly entered under former chapter 67 of this title shall not be more than 10 percent less than the rates for such mail would be if the funds authorized under [subsections (b) and (d) of this section] subsection (b) were not appropriated.

* * * * * * *

***414** PART IV–MAIL MATTER

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S 3202. Penalty mail

(a) Subject to the limitations imposed by sections 3204 and 3207 of this title, there may be transmitted as penalty mail–

(1) ***

* * * * * * *

(3) mail relating to a collection of statistics, survey, or census authorized by title 13 and addressed to the Department of Commerce or a bureau or agency thereof; and

(4) mail of State agriculture experiment stations pursuant to sections 325 and 361f of title 7[; and].

* * * * * * *

CHAPTER 36–POSTAL RATES, CLASSES, AND SERVICES

* * * * * * *

SUBCHAPTER II–PERMANENT RATES AND CLASSES OF MAIL

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3621.	Authority to fix rates and classes.
3622.	Rates and fees.
3623.	Mail classification.

* * * * * * *

(3627.	Adjusting free and reduced rates.)
3627.	Adjusting free rates.

SUBCHAPTER III–TEMPORARY RATES AND CLASSES

3641.	Temporary changes in rates and classes.
3642.	Special authority relating to reduced-rate categories of mail.

* * * * * * *

SUBCHAPTER I–POSTAL RATE COMMISSION

S 3601. Establishment

(a) The Postal Rate Commission is an independent establishment of the executive branch of the Government of the United States. The Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and [concent] consent of the Senate. The Commissioners shall be chosen on the basis of their professional qualifications and

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may be removed by the President only for cause. Not more than 3 of the Commissioners may be adherents of the same political party.

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SUBCHAPTER II–PERMANENT RATES AND CLASSES OF MAIL

* * * * * * *

S 3625. Action of the Governors

(a) ***

* * * * * * *

***415** (d) The Governors may reject the recommended decision of the Commission and the Postal Service may resubmit its request to the Commission for reconsideration. Upon resubmission, the request shall be reconsidered, and a further recommended decision of the Commission shall be acted upon under this section and subject to review in accordance with section [3268] 3628 of this title. However, with the unanimous written concurrence of all of the Governors then holding office, the Governors may modify any such further recommended decision of the Commission under this subsection if the Governors expressly find that (1) such modification is in accord with the record and the policies of this chapter, and (2) the rates recommended by the Commission are not adequate to provide sufficient total revenues so that total estimated income and appropriations will equal as nearly as practicable estimated total costs.

* * * * * * *

S 3626. Reduced rates

[(a)(1) Except as provided in paragraph (2) of this subsection, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with applicable provisions of this chapter.

[(2) Rates of postage for a class of mail or kind of mailer referred to in paragraph (1) of this subsection shall be established in accordance with the requirement that the direct and indirect postal costs attributable to such class of mail or kind of mailer (excluding any other costs of the Postal Service) shall be borne by such class of mail or kind of mailer, as the case may be: Provided, however, That with respect to mail under former section 4452(b) and 4452(c) of this title the preceding limitation shall apply only to rates of postage for letter shaped pieces, as such pieces are defined in the associated classification and rate schedules.]

(a)(1) For the purpose of this subsection–

(A) the term “costs attributable”, as used with respect to a class of mail or kind of mailer, means the direct and indirect postal costs attributable to such class of mail or kind of mailer (excluding any other costs of the Postal Service);

(B) the term “regular-rate category” means any class of mail or kind of mailer, other than a class or kind referred to in paragraph (2)(A) or section 2401(c); and

(C) the term “institutional-costs contribution”, as used with respect to a class of mail or kind of mailer, means that portion of the estimated revenues to the Postal Service from such class of mail or kind of mailer which remains after subtracting an amount equal to the estimated costs attributable to such class of mail or kind of mailer.

(2)(A) Except as provided in paragraph (3) or (4), rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in a manner such that the estimated revenues to be received by the ***416** Postal Service from such class of mail or kind of mailer shall be equal to the sum of–

(i) the estimated costs attributable to such class of mail or kind of mailer; and

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(ii) the product derived by multiplying the estimated costs referred to in clause (i) by the applicable percentage under subparagraph (B).

(B) The applicable percentage for any class of mail or kind of mailer referred to in subparagraph (A) shall be the product derived by multiplying–

(i) the percentage which, for the most closely corresponding regular-rate category, the institutional-costs contribution for such category represents relative to the estimated costs attributable to such category of mail, times

(ii)(I) one-twelfth, for fiscal year 1994;

(II) one-sixth, for fiscal year 1995;

(III) one-fourth, for fiscal year 1996;

(IV) one-third, for fiscal year 1997;

(V) five-twelfths, for fiscal year 1998; and

(VI) one-half, for any fiscal year after fiscal year 1998.

(C) For temporary special authority to permit the timely implementation of the preceding provisions of this paragraph, see section 3642.

(D) For purposes of establishing rates of postage under this subchapter for any of the classes of mail or kinds of mailers referred to in subparagraph (A), subclauses (I) through (V) of subparagraph (B)(ii) shall be deemed amended by striking the fraction specified in each such subclause and inserting “one-half”.

(3) The rates for the advertising portion of any mail matter under former section 4358(d) or 4358(e) of this title shall be equal to the rates for the advertising portion of the most closely corresponding regular-rate category of mail, except that if the advertising portion does not exceed 10 percent of the issue of the publication involved, the advertising portion shall be subject to the same rates as apply to the nonadvertising portion.

(4) The rates for any advertising under former section 4358(f) of this title shall be equal to 75 percent of the rates for advertising contained in the most closely corresponding regular-rate category of mail.

* * * * * * *

[(i)(1) As used in this subsection–

[(A) “reduced-rate category” means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

[(B) “regular-rate category” means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

[(2) Subject to the requirements of section 2401(c) of this title and paragraph (a)(2) of this section with respect to mail under former sections 4452(b) and 4452(c) of this title, This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining ***417** the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the

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costs attributed to that regular-rate category as required by section 3622(b)(3) of this title.]

(j)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail which advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of–

(A) ***

(B) any insurance policy, unless the organization which promotes the purchase of such policy is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization, and the coverage provided by the policy is not generally otherwise commercially available; [or]

(C) any travel arrangement, unless the organization which promotes the arrangement is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the travel contributes substantially (aside from the cultivation of members, donors, or supporters, or the acquisition of income or funds) to one or more of the purposes which constitutes the basis for the organization's authorization to mail at such rates, and the arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization[.]; or

(D) any product or service (other than any to which subparagraph (A), (B), or (C) relates), if–

(i) the sale of such product or the providing of such service is not substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates; or

(ii) the mail matter involved is part of a cooperative mailing (as defined under regulations of the Postal Service) with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

except that–

(I) any determination under clause (i) that a product or service is not substantially related to a particular purpose shall be made under regulations which shall be prescribed by the Postal Service based on subsections (a) and (c) of section 513 of the Internal Revenue Code of 1986; and

***418** (II) clause (i) shall not apply if the product involved is a periodical publication described in subsection (m)(2) (including a subscription to receive any such publication).

* * * * * * *

(3)(A) Upon request, an organization authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title shall furnish evidence to the Postal Service concerning the eligibility of any of its mail matter or mailings to be sent at those rates.

(B) The Postal Service shall establish procedures to carry out this paragraph, including procedures for mailer certification of compliance with the conditions specified in paragraph (1)(D) or subsection (m), as applicable, and verification of such compliance.

* * * * * * *

[(k)] (l) In the administration of this section, the term "advertising", as used in former section 4358(j)(2) of this title, does not include the publisher's own advertising in a publication published by the official highway or development agency of a State.

(m)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail consisting of products, unless such products–

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(A) were received by the organization as gifts or contributions; or

(B) are low cost articles (as defined by section 513(h)(2) of the Internal Revenue Code of 1986).

(2) Paragraph (1) shall not apply with respect to a periodical publication of a qualified nonprofit organization.

S 3627. Adjusting free [and reduced] rates

If Congress fails to appropriate an amount authorized under section 2401(c) of this title for any class of mail [sent at a free or reduced rate under section 3217, 3403–3406, or 3626 of this title,] sent free of postage under section 3217 or 3403–3406, the rate for that class may be adjusted in accordance with the provisions of this subchapter so that the increased revenues received from the users of such class will equal the amount for that class that the Congress was to appropriate.

* * * * * * *

SUBCHAPTER III–TEMPORARY RATES AND CLASSES

* * * * * * *

S 3642. Special authority relating to reduced-rate categories of mail

(a) In order to permit the timely implementation of section 3626(a)(2), the Postal Service may establish temporary rates of postage for any class of mail or kind of mailer referred to in section 3626(a)(2)(A).

(b) Any exercise of authority under this section shall be in conformance with the requirements of section 3626(a), subject to the following:

(1) All "attributable costs" and "institutional-costs contributions" assumed shall be the same as those which were assumed ***419** for purposes of the then most recent proceedings under subchapter II pursuant to which rates of postage for the class of mail or kind of mailer involved were last adjusted.

(2) Any temporary rate established under this section shall take effect upon such date as the Postal Service may determine, except that–

(A) such a rate may take effect only after 10 days' notice in the Federal Register; and

(B) no such rate may take effect after September 30, 1998.

(3) A temporary rate under this section may remain in effect no longer than the last day of the fiscal year in which it first takes effect.

(4) Authority under this section may not be exercised in a manner that would result in more than 1 change taking effect under this section, during the same fiscal year, in the rates of postage for a particular class of mail or kind of mailer, except as provided in paragraph (5).

(5) Nothing in paragraph (4) shall prevent an adjustment under this section in rates for a class of mail or kind of mailer with respect to which any rates took effect under this section earlier in the same fiscal year if–

(A) the rates established for such class of mail or kind of mailer by the earlier adjustment are superseded by new rates established under subchapter II; and

(B) authority under this paragraph has not previously been exercised with respect to such class of mail or kind of mailer

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based on the new rates referred to in subparagraph (A).

(c) The Postal Service may prescribe any regulations which may be necessary to carry out this section, including provisions governing the coordination of adjustments under this section with any other adjustments under this title.

* * * * * * *

SUBCHAPTER V–GENERAL

* * * * * * *

S 3683. Uniform rates for books; films; other materials

(a) ***

[(b) The rates for mail matter specified in former section 4554(a)(1) or 4554(b)(2)(A) of this title, when mailed from a publisher or a distributor to a school, college, university, or library, shall be the rate currently in effect for such mail matter under the provisions of former section 4554(b)(1) of this title.]

(b) The rates of postage under former section 4554(b)(1) of this title shall not be effective except with respect to mailings which–

(1) constitute materials specified in former section 4554(b)(2) of this title; and

(2) are sent between–

(A) an institution, organization, or association listed in subparagraph (A) or (B) of such former section 4554(b)(1) and any other such institution, organization, or association;

***420** (B) an institution, organization, or association referred to in subparagraph (A) and any individual (other than an individual having a financial interest in the sale, promotion, or distribution of the materials involved); or

(C) an institution, organization, or association referred to in subparagraph (A) and a qualified nonprofit organization (as defined in former section 4452(d) of this title) that is not such an institution, organization, or association.

* * * * * * *

****663*421** TITLE XI–COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Washington, DC, May 14, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.
Dear Mr. Chairman: Pursuant to section 7 of the Concurrent Resolution on the Budget For FY94 and your letter of April 5, 1993, I am submitting on behalf of the Committee on Public Works and Transportation two copies of our FY94–98 reconciliation legislation. In addition, I am enclosing, as requested, the accompanying report language with the Ramseyer.

I am advised that the Congressional Budget Office will submit an official cost estimate of our legislation to you directly. I am further advised that our Legislative Counsel will coordinate final compilation and reporting requirements as requested by your Committee.

I do want to note that this may not be the final reconciliation submission of the Committee on Public Works and Transportation. The Committee is in the process of reviewing the entire reconciliation package for possible action taken by other committees that involve matters under our jurisdiction. Should it be necessary, as a result of that review, for our

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Committee to take additional reconciliation action, we would plan to do so prior to formal action by the Budget Committee.

I appreciate your assistance in this matter and look forward to working with you as reconciliation proceeds through the legislative process.

Sincerely yours,

Norman Y. Mineta,
Chairman.

COMMITTEE REPORT-RECONCILIATION

GENERAL AVIATION FEES

With respect to general aviation fees, the FY1994 Budget Resolution assumed that the Committee would report legislation to save $18 million in FY1994 and a total of $211 million in the period FY 1994-1998. The Budget Resolution assumed a proposal made by the President that general aviation aircraft registration fees be annualized and increased significantly. (Presently, aircraft are registered with the Federal Aviation Administration for a one-time charge of $5).

Beyond raising revenues to reduce the Federal deficit, the President said fees were necessary to bring general aviation's contribution ****664*422** to the Airport and Airway Trust more in line with costs attributed to general aviation's use of the air traffic control and airport system. Studies by the Department of Transportation have indicated that the annual cost to the Federal Government of providing general aviation the services it receives is between $847 million and $2.143 billion (FY 1991), while the government only recovers between 7 and 19% (depending on the costs assumed) from user fees on general aviation. This means that other aviation users, principally airline passengers who pay a 10% ticket tax are in effect cross-subsidizing the cost of general aviation's use of the aviation system. Part of the policy behind the President's proposal is to work toward reducing this subsidization.

The President proposed that the fee for registering a general aviation aircraft be increased to $90 in FY 1994; $150 in FY 1995; $210 in FY 1996, and $270 in FY 1997. In FY 1998, the fee would be adjusted for changes in the Consumer Price Index. These fees would raise $18 million in revenue in FY 1994 and $211 million over the five year period.

The Committee regrets the necessity of imposing new fees on general aviation. This sector is the backbone of our national aviation system. General aviation provides vital transportation services and furnishes much of the technology and personnel who make our commercial aviation system the world's finest.

In recent years increasing costs (including excessive product liability awards) have created serious difficulties for general aviation, resulting in a decline in the number of aircraft sold and the number of licensed pilots. In these circumstances, any new fees must be carefully structured to minimize their impact on the industry. With these thoughts in mind, the Committee has restructured the President's proposal to produce a much fairer and less burdensome schedule of fees.

Under the President's proposal, the same registration fee would be levied on a small single engine two-seater aircraft worth less than $10,000 as on a large multi-million dollar corporate jet. It is clear that most persons who own their own aircraft and are able to afford today's cost of flying should be able to afford some increased fees for the registration of aircraft. However, it appears to the Committee that a flat fee on all types of aircraft, eventually amounting to hundreds of dollars annually, would certainly serve as an important factor in some people's decision of whether to enter or continue to participate in general aviation.

While it is important to collect new revenues to work toward reducing the Federal deficit, the Committee believes that the President's proposed fee structure could well have the unintended consequence of reducing general aviation activity which would be counterproductive to raising revenue from this sector as well as to restoring the nation's overall economic health and vitality.

The Committee's proposal modifies the President's so that the vast preponderance of general aviation owners would pay a relatively nominal registration fee at a level that would not be likely to affect decisions on whether to participate in general

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aviation. Owners of larger aircraft would pay higher fees commensurate with the larger size and higher value of their aircraft. The Committee also believes that a fee schedule based on size better serves the ****665*423** President's objective of recovering costs in a way that is proportionate to use of the aviation system. Generally, the larger, more sophisticated aircraft use the air traffic control system much in the way that airliners do, while many small single engine aircraft do not use any air traffic control services.

With regard to the aircraft registration fee, the Committee has adopted a schedule of fees correlated to the weight (or size) of aircraft. For aircraft under 3,500 pounds (small, single engine aircraft), there would be a $40 annual registration fee. (Aircraft that are so small as to not have an electrical system, gliders and balloons would be exempt from the registration fee). For aircraft between 3,500 and 6,500 pounds (small, twin engine aircraft), there would be annual fee of $175. For aircraft between 6,500 and 10,000 pounds (large twin engine aircraft), there would be an annual fee of $500. For aircraft between 10,000 and 100,000 pounds (corporate large turbo prop and jet aircraft), there would be an annual fee of $1,000. For aircraft over 100,000 (privately owned airliner-type aircraft), there would be an annual fee of $2,000. Under the schedule, approximately 81% of the aircraft owners would be limited to a nominal $40 annual fee.

In order to further achieve the goal of lessening the impact of the fee on the vast preponderance of small aircraft owners, the Committee has adopted three other fees:

An average aircraft recording and title fee of $200 to be levied whenever the ownership of an aircraft changes.

A $500 annual fee for an Aviation Medical Examiner's Certificate. Persons holding these certificates conduct periodic pilot medical examinations for which they are free to charge the pilot. These physicians also are able to attend at no expense, a medical education course sponsored by the Federal Aviation Administration, which can be credited toward continuing education requirements in many states.

A triennial $12 Airman Pilot Certificate.

The following table sets forth these fees and their estimated revenues.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The Federal Aviation Administration under existing authority has been considering various fees on pilots, aircraft, and examiners. With respect to aircraft registration and aviation medical examiners, it is the intent of this legislation to establish fees in lieu ****666*424** of those being considered by the agency, not in addition to those fees.

SECTION-BY-SECTION ANALYSIS

The bill amends Section 313(f) of the Federal Aviation Act of 1958 which authorizes specific fees that the FAA Administrator may collect. The bill rewrites 313(f) to mandate aircraft registration and other fees as follows:

Section 313(f)(1)(A)(i) establishes a schedule of annual aircraft registration fees beginning in FY 1994:

Not over 3,500 pounds–$40; over 3,500 but not over 6,500 pounds–$175; over 6,500 but not over 10,000 pounds–$500; over 10,000 but not over 100,000 pounds–$1,000; over 100,000 pounds–$2,000.

Further, these fees will be increased by an average of $200 if the ownership of the aircraft is transferred. The Committee directs the Federal Aviation Administration to develop a sliding schedule of fees based on aircraft weight, similar to the basic aircraft registration fee schedule.

Section 313(f)(1)(A)(ii) provides the following exemptions to the registration fee: (I) air carrier aircraft; (II) U.S. Government aircraft; (III) aircraft registered under a dealer's aircraft registration certificate; (IV) aircraft not certificated with an engine-driven electrical system; (V) balloons and gliders.

The Committee believes it is appropriate to exempt non-electrically equipped aircraft, balloons, and gliders because these aircraft typically do not use air traffic control and navigational services. Use of these services requires a radio and electrically

powered instruments, which these aircraft do not have.

Section 313(f)(1)(B) establishes an annual fee of $500 on persons that the Federal Aviation Administration has designated as an aviation medical examiner.

Section 313(f)(1)(C) establishes a triennial airman pilot's certificate fee of $12.

Section 313(f)(2) continues the authority of the Administrator to collect a fee for the processing of forms for major fuel tank alterations that existed in the Section 313(f) being replaced with this legislation.

Section 313(f)(3) directs that all fees established by this subsection be deposited in the Airport and Airway Trust Fund.

SEC. 11002. RECREATIONAL USER FEES

This section amends the Flood Control Act of 1968 to authorize the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. A developed recreation site or facility is a physically improved area with vehicle access, sanitation facilities and recreation facilities, such as camping and picnic sites, picnic shelters, swimming beaches and boat launching ramps. Fees are limited to a maximum of $3 per vehicle, per day, adjusted for inflation, except for campsites where existing law requiring market-based fees continues to apply. The Secretary would be prohibited from charging fees for the use of provision of drinking water, wayside exhibits, areas with only picnic tables and lacking sanitary or other facilities, general purpose roads, overlook sites, ****667*425** toilet facilities, surface water areas, undeveloped or lightly developed shoreland, or general visitor information. Undeveloped or lightly developed shoreland are lands adjoining a Corps administered lake where nominal or no public recreation facilities exist. The fees will be deposited into the special Treasury account for the Corps of Engineers that has been established under authority of the Land and Water Conservation Fund Act of 1965. The section also deletes the existing requirement in law that the Corps of Engineers provide one free campground at each of its projects where camping is permitted.

CHANGES IN EXISTING LAW MADE BY TITLE XI OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

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* * * * * * *

TITLE III–ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

Sec. 301. Creation of Agency.

* * * * * * *

Sec. 313. Other powers and duties of Administrator.

(a) In general.

* * * * * * *

[(f) Processing fees.]
(f) Fees for services.

* * * * * * *

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OTHER POWERS AND DUTIES OF ADMINISTRATOR

GENERAL

Sec. 313. (a)***

* * * * * * *

[(f) Processing Fees.–

[(1) Establishment and collection.–The Administrator may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

[(2) Maximum fee schedule.–The amount of any fee which may be collected under this subsection–

[(A) with respect to issuance of an airman's certificate to a pilot may not exceed $12;

***426** [(B) with respect to registration of an aircraft after transfer of ownership may not exceed $25;

[(C) with respect to renewal of an aircraft registration may not exceed $15; and

[(D) with respect to processing of a form for a major repair or alteration of a fuel tank or fuel system of an aircraft may not exceed $7.50.

[The amounts established by this paragraph shall be adjusted by the Administrator for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

[(3) Limitation.–No fee may be collected under this subsection before the date on which the final regulations referred to in section 7207(a) of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 take effect.

[(4) Credit to account; availability.–The amount of fees collected under this subsection shall be credited to the account in the United States Treasury from which expenses were incurred by the Administrator for carrying out titles V and VI of this Act and shall be available to the Administrator for paying expenses for which such fees are collected.]

(f) Fees for Services.–

(1) Imposition and collection.–The following fees are imposed and shall be collected for services rendered:

(A) Aircraft registration fees.–

(i) General rule.–For registration of an aircraft, the fee to be collected from the owner of the aircraft in each fiscal year beginning after September 30, 1993, shall be determined under the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

If the ownership of the aircraft is also transferred in such fiscal year, the fee to be collected for registration of the aircraft in such fiscal year under this subparagraph, as determined from the table, shall be increased by such amount as the Administrator shall determine so that the average amount of the increase for all aircraft collected under this sentence in such fiscal year will be approximately $200.00.

(ii) Exemptions.–No fee shall be collected under this subparagraph for registration of an aircraft in a fiscal year if the aircraft–

(I) is owned or operated by an air carrier exclusively to provide air transportation;
(II) is owned by, or operated exclusively by or for, the United States Government;
(III) is registered under a dealer's aircraft registration certificate issued under section 505 of this Act;

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***427** (IV) is not originally certificated with an engine driven electrical system or has not subsequently been certified by the Administrator with such a system installed; or
(V) is a balloon or glider.
(B) Designation as aviation medical examiners.–For designation of a person as an aviation medical examiner, the fee to be collected from such person in each fiscal year beginning after September 30, 1993, shall be $500.

(C) Issuance of certificates to pilots.–After September 30, 1993, the fee to be collected for issuance or renewal of an airman's certificate to a pilot shall be $12. The fee shall be collected from each pilot at least once every 3 fiscal years.

(2) Continuation of fee for processing of forms for major fuel tank alterations.–

(A) Establishment and collection.–The Administrator may establish such fees as may be necessary to cover the costs associated with processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

(B) Maximum amount.–The amount of any fee under this subsection with respect to processing of a form for a major repair or alteration of a fuel tank or fuel system of an aircraft may not exceed $7.50. Such maximum amount shall be adjusted annually by the Administrator for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(3) Collection and deposit in trust fund.–The amounts of all fees established by or under this subsection shall be collected by the Administrator, or the Secretary of the Treasury for the Administrator, and shall be deposited in the Airport and Airway Trust Fund.

* * * * * * *

SECTION 210 OF THE FLOOD CONTROL ACT OF 1968

[Sec. 210. No entrance]

SEC. 210. RECREATIONAL USER FEES.

(a) Prohibition on Admissions Fees.–No entrance or admission fees shall be collected after March 31, 1970, by any officer or employee of the United States at public recreation areas located at lakes and reservoirs under the jurisdiction of the Corps of Engineers, United States Army. [User fees at these lakes and reservoirs shall be collected by officers and employees of the United States only from users of highly developed facilities requiring continuous presence of personnel for maintenance and supervision of the facilities, and shall not be collected for access to or use of water areas, undeveloped or lightly developed shoreland, picnic grounds, overlook sites, scenic drives, or boat launching ramps where no mechanical or hydraulic equipment is provided.]

***428** (b) Fees for Use of Developed Recreation Sites and Facilities.–

(1) Establishment and collection.–Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps.

(2) Exemption of certain facilities.–The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, general purpose roads, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreland, or general visitor information.

(3) Per vehicle limit.–The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph) for persons entering the site or facility by private, noncommercial vehicle shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

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(4) Deposit into treasury account.–All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(i)).

* * * * * * *

SECTION 4 OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965

ADMISSION AND USE FEES; ESTABLISHMENT AND REGULATIONS

Sec. 4. (a)***

(b) Recreation Use Fees.–Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: Provided, That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, picnic tables, or boat ramps: Provided, however, That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or facilities are provided: And provided further, That in no event shall there be a charge for the use of any campground not having the following–tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by ***429** an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). [At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army, where camping is permitted, such agency shall provide at least one primitive campground, containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed.] Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

Washington, DC, May 14, 1993.

Hon. Norman Y. Mineta,
Chairman, Committee on Public Works and Transportation,
U.S. House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation recommendations of the House Committee on Public Works and Transportation.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum
(for Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Reconciliation Recommendations of the House Committee on Public Works and Transportation.

3. Bill status: As ordered reported by the House Committee on Public Works and Transportation on May 13, 1993.

4. Bill purpose: One section of this title would amend the Federal Aviation Act of 1958 to establish new fees for aviation services. These fees would apply to aircraft registrations and transfers of title, the designation of aviation medical examiners, and the certification of pilots. All amounts collected under this provision would be deposited into the Airport and Airways

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Trust Fund.

The other section would authorize the Secretary of the Army to collect user fees at recreation sites administered by the U.S. Army Corps of Engineers. The legislation would repeal the requirement that the Corps offer at least one free campsite at each of its camping areas and would loosen minimum standards that must be met in order for the agency to charge fees at such facilities as campsites, beaches, and boat launch ramps. Finally, this section would impose a limit on daily fees of $3 per vehicle, subject to annual adjustments for inflation.

****668** 5. Estimated cost to the Federal Government:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
***430** The budgetary impact of this bill falls within budget functions 300 and 400.

Basis of estimate

Aviation Fees: The aviation fees established by this title would replace fees currently collected by the Federal Aviation Administration (FAA), which now total less than $1 million per year. The existing fees, however, have no impact on the deficit, because they are credited to FAA appropriations and available to offset agency spending. Because the new fees would not be credited to FAA appropriations, the total amount collected under this title would serve to reduce the deficit.

CBO's estimate of receipts is based on FAA data concerning the number of registered aircraft, title transfers, pilot certifications, and aviation medical examiners. CBO assumed that these new fees could be fully implemented in fiscal year 1994.

Corps of Engineers Recreation Fees: Based on information provided by the Corps, CBO estimates that annual collections would be about $18 million once the new fees have been fully implemented. Because it would take several months to establish and implement the new fee schedule, first-year receipts would be lower–about $13 million.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marjorie Miller and Deborah Reis (226–2860).

10. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

****669*431** TITLE XII–COMMITTEE ON VETERANS AFFAIRS

House of Representatives,
Committee on Veterans' Affairs,
Washington, DC, May 14, 1993.

Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.
Dear Mr. Chairman: On May 11, the Committee approved changes in existing law under its jurisdiction in order to meet the reconciliation instructions contained in the Budget Resolution. CBO estimates the Committee recommendations will produce outlay savings of $260 million in the first year and $2.590 billion over five years. As requested, enclosed are bill language and report language, along with a CBO cost estimate of the recommendations we have made.

I am also enclosing additional views which the Honorable Bob Stump, Ranking Minority Member, has requested be included in the Committee's report to the Budget Committee.

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Sincerely,

G.V. (Sonny) Montgomery,
Chairman.

BACKGROUND AND DISCUSSION

MEDICAL CARE COST RECOVERY

Section 1729 of title 38, United States Code, authorizes the Department of Veterans Affairs to collect from a third-party payer the reasonable cost of medical care VA furnishes for care and treatment of the nonservice-connected disabilities of (a) any veteran covered under (1) a workers' compensation law, (2) a State law concerning no-fault automobile insurance, or (3) a State or local program of compensation for victims of a crime of personal violence; and (b) a veteran who has no service-connected disabilities and who has coverage under a health plan contract (typically a health insurance plan). VA's authority to collect under a health plan contract for the cost of care furnished service-connected veterans for their nonservice-connected disabilities expires on July 31, 1994.

Section 12003 of the House bill would authorize VA, during the period ending on September 30, 1998, to collect from a third party payer under a health plan contract the reasonable cost of medical care VA furnishes for the treatment of a nonservice-connected disability to a veteran who has a service-connected disability and who is entitled to care (or payment of the expenses of care) under the health plan contract.

In addition, section 12003 would eliminate the distinction in law between the care of service-connected disabilities and other disabilities ***432** for purposes of recoveries under section 1729 for treatment provided for such disabilities. Section 12003 amends section 1729(a)(2) of title 38 to authorize VA to collect payment from third ****670** party payers for the cost of care provided for service-connected disabilities. This authority would expire on September 30, 1998.

While the Committee has sought to preserve the distinction in law between service-connected disabilities and others under this section, the elimination of that distinction for the purposes of section 1729 is in no respect a reflection of any diminution in the significance this Committee attaches to the concept of service-connection and to the debt this Nation owes the service-connected veteran. That debt is reflected throughout the body of law codified in title 38, United States Code. This amendment, rather, reflects the difficulty of achieving reconciliation targets through "easy" measures. In this instance, the limitation in existing law regarding collecting for the cost of care of service-connected disabilities has particularly provided a windfall for insurers; authorizing such collections would not impose costs on the veteran.

OUTPATIENT MEDICATIONS

Section 1722A of title 38 requires the VA to collect a $2 copayment for each 30-day supply of medication furnished for the outpatient treatment of a nonservice-connected condition for any veteran except those veterans who have a service-connected disability rated 50% or more, and those veterans whose annual income does not exceed the maximum annual rate of pension. This authority would expire on September 30, 1997.

Section 12002(b) of the House bill would extend this authority until September 30, 1998.

ELIGIBILITY CATEGORIES AND PER DIEM COPAYMENTS

Prior to the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), provisions of law established, for purposes of determining eligible veterans' priority for care and associated rights and obligations, three categories. Current as well as then-applicable law required, for example, that VA provide needed hospital care to veterans in "Category A"–that is, service-connected veterans, those below a specified income threshold (below $17,214 at the time of OBRA 1990's enactment in the case of a single veteran without dependents), and specified others. So-called "Category B" veterans–those whose incomes exceed the "Category A" threshold but fall below the threshold for "Category C" ($22,987 for the comparable time period and veteran cited above) were only eligible to receive hospital care to the extent that resources and facilities are

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available. Category C veterans, those with the highest incomes, would be furnished care on a lowest-priority basis, and then only if the veteran agreed to pay copayments, as follows:

(a) For hospital care: (1) for the first 90 days of care during any 365-day period, an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible, and (2) for each 90-day period after the first 90 days of care within a 365-day period, an amount equal to the lesser of (A) the cost of care, and (B) an amount equal to one-half the Medicare deductible.

****671*433** (b) For nursing home care: an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during each 365-day period.

(c) For outpatient care: an amount equal to 20 percent of the estimated average cost of an outpatient visit in a VA facility during the calendar year in which services are furnished

Section 8013 of OBRA 1990 for the first time eliminated the distinction between so-called categories B and C, and subjected those veterans who had been classified as in category B to the modest payment obligations previously applicable only to the highest income group. In addition, section 8013 of that Act established the following new cost-sharing obligations applicable to those formerly classified as category B and C veterans:

(1) $10 per day for hospital care starting on the first day of care; and

(2) $5 per day for nursing home care starting on the first day of care.

Under current law, the provisions of OBRA 1990 modifying health care eligibility categories and authorizing the Department to collect the $5 and $10 per diem from veterans in those categories expires on September 30, 1997.

Section 12002 of the House bill would extend until September 30, 1998, the expiring $5 and $10 per day copayment obligations associated with nursing home and hospital care, respectively, as well as the provision in law which eliminates the distinction between former “category B and C” veterans.

AUTHORITY FOR CERTAIN INCOME VERIFICATION PROVISIONS

Section 12004 would extend existing provisions of law in section 5317, of title 38, United States Code and section 6103 of the Internal Revenue Code, originally enacted as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA ‘90) authorizing the Department of Veterans Affairs to obtain certain income data from the Internal Revenue Service to be used solely to verify a veteran’s or other benefit recipient’s continued eligibility for nonservice-connected disability pension or other needs-based benefits. This authority is set to expire on September 30, 1997. Section 12004 would change this sunset date to September 30, 1998.

LIMITATION ON PENSION FOR CERTAIN VETERANS OR SURVIVING SPOUSE

Section 12005 would extend another provision from OBRA ‘90, codified in section 5503 of title 38, United States Code, which imposes a $90 per month limitation on the amount of nonservice-connected pension payable to a single veteran or surviving spouse (with no dependents) who is eligible for care under Medicaid and who is receiving care in a non-VA nursing home. This provision treats such individuals in the same fashion as if the care were being furnished at VA expense. The provision is now set to expire on September 30, 1997. Under section 12005 the sunset date would become September 30, 1998.

****672*434** COST-OF-LIVING ADJUSTMENT FOR CERTAIN DIC RECIPIENTS

Section 12006 would prohibit the provision of a cost-of-living adjustment during fiscal year 1994 to rates of dependency and indemnity compensation (DIC) that were “grandfathered” by Public Law 102–568. This public law established in section

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1311 of title 38, United States Code, a new flat-rate benefit of $750 per month for most surviving spouses of veterans who died while on active duty or whose deaths resulted from service-connected disabilities on and after January 1, 1993. The law specifically provides, however, that, for deaths occurring prior to January 1, 1993, the amount of DIC payable to a surviving spouse will be the greater of the amount she or he was entitled to under the old rate structure or the new rate of $750 (or $915, if the veteran's death resulted from a service-connected disability which had been continuously rated as totally disabling for a period of eight years immediately preceding the veteran's death).

The intent of this reform was to provide parity in rates of DIC benefits received by surviving spouses. A further increase in DIC rates that have been "grandfathered", or protected, would not be consistent with this policy, since it would lead to further compounding of the disparity in benefit payments.

INCREASE HOME LOAN FUNDING FEE

Effective January 1, 1990, veterans and servicemembers who obtain a home loan guaranteed or insured by the Department of Veterans Affairs (VA) and who make no down payment are required to pay a loan funding fee of 1.25 percent of the loan amount. An exemption to payment of the fee is provided for service-connected veterans receiving or entitled to receive compensation. Veterans making a down payment of five percent, but less than ten percent, are charged a fee of .75 percent of the loan amount; veterans making a down payment of ten percent or more are charged a fee of .50 percent.

Effective October 28, 1992, Public Law 102–547 expanded VA home loan guaranty entitlement to members of the National Guard and Reserve who have received an honorable discharge or who have served at least six years. The maximum loan fee for a no-down payment loan is 2.00 percent. National guardsmen or reservists making a down payment of five percent, but less than ten percent, are charged a fee of 1.50 percent; national guardsmen or reservists making a down payment of ten percent or more are charged a fee of 1.25 percent. Like fees collected from veterans, all fees collected are deposited in the Guaranty and Indemnity Fund.

The reported bill would increase fees beginning October 1, 1993, through September 30, 1998, as follows:

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****673*435** ANTICIPATING "RESALE LOSSES" IN VA'S NET VALUE CALCULATION

The VA has two options when property guaranteed through the VA Home Loan Guaranty Program goes into foreclosure. The VA, after calculating its liability under the guaranty, can acquire (bid on) the property to reduce its total liability or can choose to pay the claim on the guaranty (no-bid)–thus leaving title to the property and any other additional losses with the lender.

The VA decides whether or not to bid on the property based on the fair market value ("net value") of the property minus the costs the Department would incur if it acquired, managed and disposed of the property. Public Law 102–389, the "Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, FY 1993", amended the formula used during fiscal year 1993 to require the inclusion of expected losses on the resale of foreclosed properties. The reported bill extends this requirement through September 30, 1998.

REDUCTION OF COST-OF-LIVING (COLA) FOR MONTGOMERY GI BILL BENEFITS

Section 12009(a) of the bill would amend section 3015(g)(1) of title 38, United States Code, to reduce by 1% the cost-of-living adjustment (COLA) to be provided under the Montgomery GI Bill (MGIB)-Active Duty (chapter 30, title 38, United States Code) on October 1, 1993. This reduction would apply only to the COLA provided on October 1, 1993.

Section 12009(b) would similarly amend section 2131(2)(A) of title 10, United States Code, to reduce by 1% the COLA to be provided under the Montgomery GI Bill-Selected Reserve (chapter 106, title 10, United States Code) on October 1, 1993. This reduction would also apply only to benefits paid during the fiscal year beginning on October 1, 1993.

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Section 301 of Public Law 102–568, the Veterans' Benefits Act of 1992, requires the Secretary of Veterans Affairs to provide, beginning on October 1, 1993, an annual cost-of-living increase in benefits paid under the Montgomery GI Bill-Active Duty and the Montgomery GI Bill-Selected Reserve. An increase in chapter 30 and chapter 106 benefits was also provided under section 301.

Although costs of education have increased an average of seven percent each year since enactment of the GI Bill in 1984, previous Administrations did not heed Committee recommendations and failed to support increases in benefits paid under the program. As a result, the value of the 1984-level benefit diminished significantly. It was the Committee's intention that, by increasing the basic MGIB benefit under PL 102–568 and simultaneously requiring an annual cost-of-living increase, the relentless and continuing erosion of this veterans' education program would be curbed. Accordingly, it is only with great reluctance that the Committee includes these provisions in this reconciliation bill.

The primary purposes of the MGIB-Active Duty are (1) to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service and (2) to enhance the ability of the military services to recruit and retain high-quality young men and women. Under current law, most chapter 30 participants ****674*436** earn a benefit level of $400/month (effective April 1, 1993), the amount established under PL 102–568. Although this additional income is helpful, it is far below the $777/month-level a 1991 Congressional Research Service study said would be required to cover the cost of education. Thus, although the GI Bill is an important readjustment benefit, it does not provide veterans the level of assistance the Committee considers appropriate. A reduction in the COLA will diminish the Committee's efforts to maintain the value of the MGIB as a readjustment benefit.

As a recruitment and retention tool, the GI Bill has proven to be powerful and cost-effective. Following enactment of the program in 1984, recruit quality, as measured by high school graduate status and Armed Forces Qualification Test scores, improved significantly. The Committee is alarmed, however, by the results of a 1992 Department of Defense study which shows that the positive propensity of young males to enlist in the Army has plummeted since 1990. Of equal concern, the Army reports that during the first quarter of FY 1993, it was forced to bring in recruits in the lowest acceptable mental category in order to meet its quota.

Several factors, including public perceptions associated with the downsizing of the Armed Forces and reductions in the armed services' advertising budgets, have contributed to the current recruiting challenges. Studies show, however, and recruiters confirm that the opportunity to earn education benefits is the single most effective attractor of bright young people into the military. Accordingly, the importance of maintaining the benefit level available under the Montgomery GI Bill is clear. Without an educational assistance program that provides a meaningful level of assistance, the Armed Forces will be unable to recruit the smart men and women they need.

The Committee wishes to stress that, while it fully recognizes the critical need to reduce the budget deficit and is conscious of its responsibility to contribute to this important endeavor, future deficit reduction measures, because of the reasons cited above, should not include recommendations which would reduce veterans' education benefits.

LIMITATION ON CHILDREN ELIGIBLE FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

Section 12010 would amend section 3501(a)(2) of title 38, United States Code, to restrict the definition of the term "child" to natural and adopted children for the purposes of the Survivors' and Dependents' Educational Assistance program (chapter 35, title 38, United States Code). Accordingly, stepchildren would no longer be considered "eligible persons" for purposes of eligibility under chapter 35. It is the Committee's view that the educational assistance provided by the chapter 35 program should only be provided to children who are legally dependent on the veteran for support.

This provision, which would be effective October 1, 1993, does not apply with respect to any individual who, before that date, files an original application for educational assistance under chapter 35.

****675*437** SECTION-BY-SECTION

Section 12001 would provide that this title may be cited as the "Veterans Reconciliation Act of 1993."

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Section 12002(a) would amend section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 to extend until September 30, 1998 (1) provisions of the Act which eliminate, for purposes of priority to VA care and associated copayment obligations, distinctions among veterans whose incomes exceed the Category A income threshold, and (2) the $5 and $10 per day copayment obligations associated with VA provision of VA nursing home and hospital care, respectively, to such higher-income veterans.

Section 12002(b) would amend section 1722A of title 38, United States Code, to extend until September 30, 1998, VA's authority to collect a $2 copayment for each 30-day supply of medication furnished for the outpatient treatment of a nonservice-connected condition of certain veterans.

Section 12003 would amend section 1729 of title 38, United States Code, to (1) extend until September 30, 1998, VA's authority to collect from a third party payer under a health plan contract the reasonable cost of medical care VA furnishes for the treatment of a nonservice-connected disability of a veteran who has a service-connected disability and who is entitled to care (or payment of the expenses of care) under the health plan contract, and (2) temporarily eliminate, effective October 1, 1993, the distinction in law between care of service-connected disabilities and other disabilities for purposes of recoveries under section 1729 for care or services provided for such disabilities. Section 12003(b) would terminate these changes in law after September 30, 1998.

Section 12004(a) would amend section 5317(g) of title 38, United States Code, which authorizes the Secretary to verify certain income information with information reported to the Secretary of the Treasury, by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998". Section 12004(b) would amend subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998".

Section 12005 would amend section 5503(f)(7) of title 38, United States Code, which requires the Secretary to reduce pension benefits in certain cases, by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998".

Section 12006 would provide that, during Fiscal Year 1994, no increase may be provided in the rates of dependency and indemnity compensation in effect under section 1311(a)(3) of title 38, United States Code. These rates are applicable in the case of a veteran's death which occurred as the result of a service-connected disability prior to January 1, 1993, unless the rates provided in section 1311(a)(1) or 1311(a)(2) would provide a greater level of benefits to the surviving spouse. Section 12007 would amend section 3732(c) of title 38, United States Code, to extend, to September 30, 1998, the requirement to include "resale losses" in VA's net value calculation when VA determines to acquire (bid on) or pay the loan guaranty (no-bid).

****676*438** Section 12008 would amend section 3729(a) of title 38, United States Code, to increase the fee collected on VA guaranteed home loans by 0.75 percent of the total loan amount. The increased fee would apply to loans closed after September 30, 1993, but before October 1, 1998. Fees would increase from 1.25 percent to 2 percent on loans with no downpayment (2 percent to 2.75 percent for reservists); from 0.75 percent to 1.50 percent on loans with a 5 percent downpayment (1.5 percent to 2.25 percent for reservists); and 0.50 percent to 1.25 percent on loans with a 10 percent downpayment (1.25 percent to 2 percent for reservists). Service-connected veterans would continue to be exempt from payment of a loan fee.

Section 12009(a) of the bill would amend section 3015(g)(1) of title 38, United States Code, to reduce by 1% the cost-of-living adjustment (COLA) to be provided under the Montgomery GI Bill-Active Duty on October 1, 1993. This reduction would apply only to the COLA provided on October 1, 1993.

Section 12009(b) would amend section 2131(2)(A) of title 10, United States Code, to reduce by 1% the COLA to be provided under the Montgomery GI Bill-Selected Reserve on October 1, 1993. This reduction would apply only to the COLA provided on October 1, 1993.

Section 12010 would amend section 3501(a)(2) of title 38, United States Code, to restrict the definition of the term "child" to natural and adopted children for the purposes of the Survivors' and Dependents' Educational Assistance program (chapter 35, title 38, United States Code). Accordingly, stepchildren would no longer be considered "eligible persons" for purposes of

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eligibility under chapter 35.

This provision, which would be effective October 1, 1993, would not apply with respect to any individual who, before that date, files an original application for educational assistance under chapter 35.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 13, 1993.

Hon. G.V. Montgomery,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for the provisions reducing spending in programs within the jurisdiction of the House Committee on Veterans' Affairs, as ordered transmitted to the House Committee on the Budget on May 11, 1993. These estimates are consistent with estimates provided to the Committee during its deliberations on this measure.

The estimates included in the attached report represent the 1994–1998 effects on the federal budget and on the budget resolution baseline of the Committee's legislative proposals. CBO understands that the staff of the Committee on the Budget will be responsible for interpreting how the savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

****677*439** If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Nina Shepherd, Mary Helen Petrus, and Vicki Fraider, who can be reached at 226–2840.

Sincerely,

James L. Blum,
(For Robert D. Reischauer).

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CHANGES IN EXISTING LAW MADE BY TITLE XII OF THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by title XII of the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

***440** SECTION 8013 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 8013. MODIFICATION OF HEALTH-CARE CATEGORIES AND COPAYMENTS.

(a) ***

* * * * * * *

(e) Sunset.–The amendments made by this section expire on September 30, [1992] 1998. [Notwithstanding the preceding sentence, the amendments made by this section shall be in effect through September 30, 1997.]

TITLE 38, UNITED STATES CODE

* * * * * * *

PART II–GENERAL BENEFITS

* * * * * * *

CHAPTER 17–HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

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* * * * * * *

SUBCHAPTER III–MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

* * * * * * *

S 1722A. Copayment for medications

(a) ***

* * * * * * *

(c) The provisions of subsection (a) expire on September 30, [1992] 1998. [Notwithstanding the preceding sentence, the provisions of subsection (a) shall be in effect through September 30, 1997.]

* * * * * * *

S 1729. Recovery by the United States of the cost of certain care and services

(a)(1) Subject to the provisions of this section, in any case in which a veteran is furnished care or services under this chapter for a [non-service-connected] disability described in paragraph (2) of this subsection, the United States has the right to recover or collect the reasonable cost of such care or services (as determined by the Secretary) from a third party to the extent that the veteran (or the provider of the care or services) would be eligible to receive payment for such care or services from such third party if the care or services had not been furnished by a department or agency of the United States.

***441** (2) Paragraph (1) of this subsection applies to a non-service-connected disability and, during the period before October 1, 1998, to a service-connected disability–

(A) ***

* * * * * * *

(E) for which care and services are furnished [before August 1, 1994,] before October 1, 1998, under this chapter to a veteran who–

(i) has a service-connected disability; and

* * * * * * *

PART III–READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 30–ALL–VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * * * *

SUBCHAPTER I–PURPOSES; DEFINITIONS

* * * * * * *

S 3015. Amount of basic educational assistance

(a) ***

* * * * * * *

(g)(1) With respect to the fiscal year beginning on October 1, 1993, the Secretary shall provide a percentage increase in the

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monthly rates payable under subsection (a)(1) and (b)(1) of this section equal to the percentage by which the Consumer Price Index (all items, United States city average published by the Bureau of Labor Statistics) for the 12–month period ending June 30, 1993, less one percentage point exceeds such Consumer Price Index for the 12–month period ending June 30, 1992.

* * * * * * *

CHAPTER 35–SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER I–DEFINITIONS

* * * * * * *

S 3501. Definitions

(a) For the purposes of this chapter and chapter 36 of this title–

(1) ***

(2) The term "child" includes individuals who are married and individuals who are above the age of twenty-three years, but does not include an individual who is not the natural or ***442** legally adopted child of the parent from whom eligibility under this chapter is derived.

* * * * * * *

CHAPTER 37–HOUSING AND SMALL BUSINESS LOANS

* * * * * * *

SUBCHAPTER III–ADMINISTRATIVE PROVISIONS

* * * * * * *

S 3729. Loan fee

(a)(1) ***

* * * * * * *

[(6) With respect to each loan closed during the period beginning on November 1, 1990, and ending on September 30, 1991, each amount specified in paragraph (2) of this subsection shall be increased by 0.625 percent of the total loan amount.]

(6) With respect to a loan closed after September 30, 1993, and before October 1, 1998, for which a fee is collected under paragraph (1), the amount of such fee, as computed under paragraph (2), shall be increased by 0.75 percent of the total loan amount other than in the case of a loan described in subparagraph (A), (D)(ii), or (E) of paragraph (2).

* * * * * * *

S 3732. Procedure on default

(a) ***

* * * * * * *

(c)(1) For purposes of this subsection–

(A) ***

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* * * * * * *

(C) The term "net value", with respect to real property, means the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Secretary estimates the Secretary would incur (if the Secretary were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, [resale,] resale (including losses sustained on the resale of the property), and other costs resulting from the acquisition and disposition of the property, excluding any amount attributed to the cost to the Government of borrowing funds.

* * * * * * *

(11) This subsection shall cease to have effect on [December 31, 1992] September 30, 1998.

* * * * * * *

***443** PART IV–GENERAL ADMINISTRATIVE PROVISIONS

* * * * * * *

CHAPTER 53–SPECIAL PROVISIONS RELATING TO BENEFITS

* * * * * * *

S 5317. Use of income information from other agencies: notice and verification

(a) ***

* * * * * * *

(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Secretary of Health and Human Services under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, [1997] 1998.

* * * * * * *

CHAPTER 55–MINORS, INCOMPETENTS, AND OTHER WARDS

* * * * * * *

S 5503. Hospitalized veterans and estates of incompetent institutionalized veterans

(a) ***

* * * * * * *

(f)(1) ***

* * * * * * *

(7) This subsection expires on September 30, [1997] 1998.

* * * * * * *

SECTION 6103 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) ***

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* * * * * * *

(l) Disclosure of Returns and Return Information for Purposes Other Than Tax Administration.–

(1) ***

* * * * * * *

(7) Disclosure of return information to federal, state, and local agencies administering certain programs under the social security act, the food stamp act of 1977, or title 38, united states code.–

***444** (A) ***

* * * * * * *

(D) Programs to which rule applies.–The programs to which this paragraph applies are:

(i) ***

* * * * * * *

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). Clause (viii) shall not apply after September 30, [1997] 1998.

* * * * * * *

SECTION 2131 OF TITLE 10, UNITED STATES CODE

S 2131. Educational assistance program: establishment; amount

(a) ***

(b)(1) ***

(2)(A) With respect to the fiscal year beginning on October 1, 1993, the Secretary shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1) to the percentage by which the Consumer Price Index (all items, United States city average, published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1993, less one percentage point exceeds such Consumer Price Index for the 12-month period ending June 30, 1992.

* * * * * * *

VETERANS' BENEFITS ACT OF 1992

* * * * * * *

TITLE III–EDUCATIONAL ASSISTANCE PROGRAMS

* * * * * * *

SEC. 301. INCREASE IN AMOUNT OF MONTGOMERY GI BILL BASIC EDUCATIONAL ASSISTANCE.

(a) ***

* * * * * * *

(c) Conforming Amendments to Chapter 30.–[Section 3015(f)] Section 3015(g) (as redesignated by section 307(a)(1)) is

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amended–

(1) by striking out paragraph (1);

* * * * * * *

***445** SEC. 307. EDUCATIONAL ASSISTANCE FOR CERTAIN PERSONS WHOSE INITIAL PERIOD OF OBLIGATED SERVICE WAS LESS THAN THREE YEARS.

(a) Educational Assistance.–Section 3015 [(as amended by section 301)] is amended–

(1) ***

* * * * * * *

****678*446** ADDITIONAL VIEWS OF BOB STUMP, CHRISTOPHER H. SMITH, DAN BURTON, MICHAEL BILIRAKIS, THOMAS J. RIDGE, FLOYD SPENCE, TIM HUTCHINSON, TERRY EVERETT, STEPHEN BUYER, JACK QUINN, SPENCER BACHUS, AND JOHN LINDER

The undersigned Minority Members of the Committee on Veterans' Affairs submit the following additional views to the Committee report complying with the reconciliation instructions of H. Con. Res. 64, the Concurrent Budget Resolution for Fiscal Year 1994.

Over recent years of runaway federal spending and budget crises, veterans have expressed a willingness to participate in deficit reduction efforts. However, veterans have also stated the belief that they should not bear a disproportionate share of that burden. The Committee on Veterans' Affairs has pointed out in its annual recommendations to the Committee on the Budget that federal spending on veterans' programs in inflation adjusted dollars has not increased in more than a decade and that its overall share of the federal budget has been steadily decreasing. Spending in constant dollars for all federal social programs has increased by 361% since 1965, while spending for veterans programs increased by only 36%. Additionally, the percentage of federal social dollars spent for veterans programs declined from 15.4% in 1965 to 4.5% in 1991. No budget for discretionary spending on veterans' health care has been adequate to maintain current services since fiscal year 1988, according to the Independent Budget proposal for VA for FY 1994, which was prepared by a group of Veterans' Service Organizations. Certainly, all federal spending should be scrutinized for improved efficiency or outright cuts to reduce the deficit, however, we believe veterans' programs have been singled out for inordinate amounts of savings in relation to their contribution to runaway deficits.

We believe providing for our nation's veterans is a paramount federal responsibility, therefore, veterans' programs should be given higher priority than other domestic social spending programs in the budget and reconciliation process. Unfortunately, the Budget Committee not only disregards the Veterans' Affairs Committee's annual justifications for additional spending but continues mandating substantial amounts of savings in reconciliation instructions. The 1990 Budget Summit agreement's cuts of $3.5 billion over five years have a year left to run, and already the Veterans' Affairs Committee is called upon in H. Con. Res. 64 to cut another $2.6 billion in mandatory spending from veterans' programs over the next five years through the reconciliation process. The Budget Committee must realize that any future reconciliation instructions to the Veterans' Affairs Committee will most likely result in direct cuts in service-connected benefits or increased user fees for services.

***447** As in previous reconciliation bills, the Veterans' Affairs Committee has endeavored to avoid mandating savings in benefits for service-connected disabled veterans. Several of the items in this year's ****679** report are extensions or provisions enacted in 1990 as part of the Omnibus Budget Reconciliation Act (OBRA). Under the circumstances, extension of those provisions is a logical step toward achieving the savings in direct spending programs mandated by the FY 1994 budget resolution. However, we would rather not have to take these actions under the duress of budget reconciliation. Rather, many Members had hoped that such savings might be applied to other veterans' programs in need of funding or possibly to help fund comprehensive reform of VA health care eligibility criteria.

One concern regarding the specific provisions in the report to the Budget Committee involves requiring insurance companies to reimburse the VA for care provided to veterans for service-connected conditions. The Consolidated Omnibus Budget

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Reconciliation Act of 1985 (COBRA), for the first time, required third-party reimbursement for treatment of non-service-connected veterans. Later reconciliation instructions forced VA to collect reimbursement from insured service-connected veterans as long as the treatment was for non-service-connected conditions. Third party reimbursement for non-service-connected conditions as a policy choice presented no fundamental question. Clearly, it shifted a cost from government to the private-sector, but as a policy matter in times of serious deficit reduction, the strong fundamental obligation Congress felt toward service-connected veterans did not hold true for conditions which had nothing at all to do with service to one's country.

However, reconciliation for fiscal year 1994 is beginning to test the policy underlying health benefits for service-connected conditions. The Veterans' Affairs Committee has approved a reconciliation provision to require third-party reimbursement of health care for service-connected disabled veterans. This is a cost shifting measure which would result in health insurance companies paying for health care provided at VA facilities, to the extent they now pay for such care at private hospitals, previously undertaken as the sole financial responsibility of the federal government.

The concerns of Minority Members with regard to billing insurance companies for costs associated with service-connected disabilities are predominantly based on the belief that government-provided health care for service-connected injuries or disease is the most fundamental basis for the VA health care delivery system. Therefore, the provision to bill for service-connected care may be viewed as a profound departure from past Congressional commitment to this group of veterans.

The unintended effects of this provision as a contributory mechanism in dismantling the VA health care system in the aftermath of national health reform is also of concern to us. We note that both the General Accounting Office and the Paralyzed Veterans of America have published studies that indicate in a national health insurance scenario, up to 50% of VA's current patients might opt for care in the private-sector. Veterans may feel that since insurance is expected to pay the bill, there is no incentive to go to VA where waiting lines for treatment and chronic underfunding have ***448** lessened the attractiveness of VA health care services in comparison to private-sector facilities.

****680** While the provision is not intended to result in direct out-of-pocket expenses to the veteran, we are concerned that it may in the manner of increased premiums. Many insurance companies exclude service-connected care from covered services. Mandating insurance companies to pay for the cost of such care may increase not only the premiums of veterans but also non-veteran insurance subscribers as well. Insurance companies may also refuse to cover the veteran at all forcing the veteran into the VA system as his only choice for health care.

Many insurance policies, in addition to excluding service-connected injuries, also have strict regulations and often exclusions with regard to pre-existing conditions. If the law mandates coverage of service-connected conditions, presumably a change may be necessary to ensure coverage of pre-existing conditions. This issue requires further exploration.

Due to the concerns outlined above, it is clear that Minority Members have many questions regarding the potential effects of billing for service-connected care. The reconciliation timetable did not allow an opportunity for a public hearing on the subject, although ordinarily it would have merited one. We, therefore, recommend that hearings on the subject be held to consider the potential impact of this provision.

We believe all advocates and friends of veterans should seriously consider the far reaching implications of reconciliation for fiscal year 1994. Veterans' Service Organizations need to realize that if a future round of reconciliation targets veterans programs for substantial savings, the Veterans' Affairs Committee will probably have to reduce benefits for service-connected disabled veterans. Having achieved inordinate savings through reconciliation provisions in 1985, 1990 and now 1993, there is little left to consider except direct savings in service-connected benefits, or wholesale reform of benefit programs.

***449** TITLE XIII–COMMITTEE ON WAYS AND MEANS–SAVINGS

Committee on Ways and Means,
House of Representatives,
Washington, DC, May 18, 1993.

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Hon. Martin Olav Sabo,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.
Dear Mr. Chairman: Pursuant to the reconciliation instruction contained in H. Con. Res. 64, I am transmitting the recommendations of the Committee on Ways and Means, approved in our Mark-up on May 13, 1993. By separate letter I have submitted the legislative language, explanatory report language, and Congressional Budget Office cost estimates for the Committee. Enclosed are our minority views. This completes our official transmission.

Total deficit reduction achieved by the Committee on Ways and Means from fiscal year 1994 through fiscal year 1998 is $299.8 billion, as required by the budget resolution.

Please feel free to contact me if you have any questions.

Sincerely yours,

Dan Rostenkowski,
Chairman.

****681** SUBTITLE A–OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

Section 13001. Clarification of Statutory Requirement for Public Telephone Access to Local Social Security Offices

Present law

During the late 1980s, the Social Security Administration (SSA) initiated a project whose dual goals were to establish a national 800 number and to restrict public telephone access to local Social Security offices. It implemented this project in two steps. In October 1988, it integrated its 37 teleservice centers (TSCs) into a national telephone network that served 60 percent of the population–in general, individuals living in large urban areas. In October 1989, it extended toll-free service via the TSCs and four new mega-TSCs to the entire country. At the same time, it eliminated direct public access to local Social Security offices by: (a) diverting calls placed to them to the 800 number, (b) removing general inquiry telephone lines, and (c) deleting office numbers from local telephone directories. As a result, the public was no longer able to call most local offices directly.

In the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508), Congress responded to widespread public dissatisfaction with this loss of local service by requiring SSA to: (a) maintain telephone access to local offices at the level generally available as of ***450** September 30, 1989, and (b) relist the numbers of affected offices in local telephone directories. P.L. 101–508 also required the General Accounting Office to report to Congress on the level of public telephone access to local offices following enactment of these requirements.

In September 1991, the GAO reported that, while SSA has generally complied with the requirement that it relist local office telephone numbers, general inquiry lines to the offices targeted by P.L. 101–508 had decreased by 30 percent, or 766 lines, below the level that existed on September 30, 1989. For those offices that had lines removed, the average loss was 57 percent. In explaining this situation, SSA asserted that P.L. 101–508 requires only that it relist local office numbers, not that it restore the general inquiry lines used by the public to reach them.

Explanation of provision

The provision would make more explicit the requirement in P.L. 101–508 that SSA maintain public access to its local offices at the level generally available on September 30, 1989, by adding the following sentence to the statute:

> In carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service the same number of telephone lines to each such local office which were in place as of such date, including telephone sets for connections to such lines.

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****682** Thus, SSA would be required to reinstall to the appropriate local offices the 766 public inquiry lines which were in service in these offices on September 30, 1989, thereby achieving the objective of restored public access that Congress intended in enacting P.L. 101–508.

The General Accounting Office would be required to make an independent determination of the number of telephone lines to each SSA local office which are in place 90 days after enactment and to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance no later than 150 days after enactment.

To avoid any curtailment of national 800-number service, the provision would require that SSA maintain its toll-free service at a level at least equal to that in effect on the date of enactment.

Effective date

The provision relating to local telephone access would be effective 90 days after enactment. The provision relating to toll-free service would be effective upon enactment.

Section 13002. Increase in Social Security Exclusion for Election Workers

Present law

Election workers who earn less than $100 per year are subject to three Social Security exclusions: (a) at the option of a State, they may be excluded from the State's voluntary coverage agreement with the Secretary of Health and Human Services (HHS); (b) they are excluded from the requirement that State and local workers ***451** hired after March 31, 1986, pay the hospital insurance portion of the Social Security tax (1.45 percent); and (c) they are excluded from the requirement in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) that State and local workers who are neither covered by a State or local retirement system nor by a voluntary agreement pay the full Social Security tax (7.65 percent).

Explanation of provision

These three exclusions would be increased to apply to election workers with annual earnings of up to $1,000, rather than the current $100; and the new exempt amount would be indexed for increases in wages in the economy.

Effective date

The increased exclusions would apply to service performed on or after January 1, 1994.

Section 13003. Use of Social Security Numbers for Jury Selection

Present law

The Privacy Act of 1974 prohibits States from requiring individuals to provide Social Security numbers for identification purposes unless the State was doing so prior to January 1, 1975, or the State ****683** is specifically permitted to do so under Federal law. The Social Security Act currently authorizes States to use the Social Security number in administration of any tax, general public assistance and driver's license or motor vehicle registration law within its jurisdiction. Other Federal statutes authorize the State use of the Social Security number for other purposes.

Currently, courts utilize jury source lists within their jurisdiction to select jurors. Source lists (most commonly made up of lists of licensed drivers and registered voters) are usually computer tapes merged by the courts to form one pool–or master list–from which jurors are selected.

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Court administrators and judges believe that these lists would be more reliable if the courts could use Social Security numbers to enable computers to identify and eliminate duplicate names as the lists are being merged. States which are permitted under current law to collect Social Security numbers for purposes such as driver's licenses and voter registration are not allowed to use those Social Security numbers for other purposes such as refining jury selection master lists, unless the court was using the Social Security number for that purpose before the Privacy Act took effect.

Current law likewise prevents States from using the Social Security number to run the merged list against computerized lists of convicted felons in order to eliminate these individuals from jury pools.

****684** Explanation of provision

The provision would permit States which already collect Social Security numbers for purposes permitted under current law to use those numbers to eliminate duplicate names and names of convicted felons from jury source lists.

***452** Effective date

The provision would be effective upon enactment.

Section 13004. Authority for Optional Social Security Coverage of Police Officers and Firefighters Under a Retirement System

Present law

In general, employees of State and local governments who participate in a public retirement system can be brought under Social Security by means of voluntary agreements entered into by the States with the Secretary of Health and Human Services.

However, the State option to obtain Social Security coverage for police officers and firefighters who are under a public retirement system applies only in 24 States that are named in the Social Security Act. (An additional option applies with respect to firefighters only: any State may obtain coverage for them if the governor certifies that it would improve the overall benefit protection of firefighters in the coverage group and a referendum is held among the group under authorization of the State). The Act also provides that, in the 24 named states, Social Security coverage can be obtained only after a state-sponsored referendum.

Explanation of provision

The provision would extend to all States the option to provide police officers and firefighters, who participate in a public retirement system, with Social Security coverage under their voluntary agreements with the Secretary of HHS. The existing requirement for a referendum held under the authority of the State would continue to apply.

Effective date

The provision would apply with respect to State requests made after enactment.

Section 13005. Limited Exemption From SECA for American Ministers Working and Resident in Canada

Present law

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Section 233(c)(1) of the Social Security Act authorizes the President to enter into "totalization agreements" with foreign countries to coordinate entitlement to Social Security benefits in the U.S. with pension benefits in those foreign countries. The law requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of work under the Social Security systems of the United States and another country.

Article V(7) of the totalization agreement between the United States and Canada provides that individuals considered self-employed by the United States who are American citizens but are residents of Canada are covered only under the Canadian Pension Plan.

Under the Social Security Act, an individual who is a duly ordained, commissioned, or licensed minister of a church or a member ***453** of a religious order is generally considered self-employed for Social Security payroll tax purposes and subject to SECA taxes.

The Canadian social insurance program treats ministers as employees of the church rather than self-employed.

Prior to the 1984 totalization agreement with Canada, duly ordained and licensed ministers who were American citizens but residents of Canada were required to pay SECA taxes to the United States and Social Security taxes to Canada.

In some cases, ministers who were American citizens but residents of Canada failed to file tax returns or pay SECA tax believing that they were not required to do so because they were paying into the Canadian Pension Plan as residents of Canada. The Internal Revenue Service has assessed taxes and penalties against those ministers who failed to file a return and pay the required taxes. Thus, although the totalization agreement now prevents these ministers from being taxed in two countries on the same earnings, they remain liable for pre-1984 taxes.

Explanation of provision

The provision would exempt ministers who were American citizens and residents of Canada, prior to the 1984 totalization agreement ****685** between the United States and Canada, and who failed to file a tax return or pay SECA taxes, from the payment of such taxes or related penalties owed to the United States.

In addition, the provision provides that the ministers' Social Security earnings records would not be credited for years in which the SECA tax was not paid.

Effective date

The provision would be effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within 6 months after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years 1979 through 1984.

Section 13006. Totalization Benefits and the Windfall Elimination Provision

Present law

The President is authorized to enter into "totalization agreements" with foreign countries. If an individual has worked under Social Security systems in both the U.S. and a foreign country with which the U.S. has an agreement, but has not worked long enough to qualify for a benefit, a totalization agreement allows the individual's coverage under both systems to be combined, or "totalized," in order for one country (or both) to pay a benefit. Benefits paid under a totalization agreement are generally prorated to take account of the fact that the person did not work for an entire career under the system that is paying benefits.

The windfall elimination provision (WEP) is applied to the computation of Social Security benefits for workers who are eligible for both Social Security and a pension from work not covered by Social Security. Under the WEP, a different benefit

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formula yielding a lower amount is used to calculate the worker's Social Security benefit. ***454** (Due to the weighting of the Social Security benefit formula toward workers with lower lifetime wages, workers with many years of work not covered by Social Security would receive a windfall in their Social Security benefit in the absence of the WEP.)

The WEP applies: (1) in the computation of some U.S. totalization benefits, and (2) in the computation of regular U.S. Social Security benefits if the individual receives a foreign totalization benefit.

With respect to U.S. totalization benefits, the benefit is prorated (to account for the fact that the worker did not work his or her entire career under the U.S. Social Security system), and in this way the weighting of the benefit formula is largely removed. Thus, the application of the WEP in this instance is inappropriate.

With respect to the calculation of regular U.S. benefits when the individual also receives a foreign totalization benefit, application of the WEP is also inappropriate. This is because a foreign pension that is based in part on U.S.-covered work should not be considered a pension based on noncovered employment for purposes of triggering application of the WEP.

****686** Explanation of provision

The provision would disregard the Windfall Elimination Provision: (1) in computing any U.S. totalization benefit, and (2) in computing the amount of a regular U.S. benefit of an individual who receives a foreign totalization benefit based in part on U.S. employment and who does not receive any other pension which is based on noncovered employment.

Effective date

The provision would be effective with respect to benefits payable for months after October, 1993.

Section 13007. Exclusion of Military Reservists From Application of the Government Pension Offset and the Windfall Elimination Provision

Present law

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are intended to reduce Social Security benefits payable to an individual who qualifies for both a Social Security benefit and a pension based on employment not covered by Social Security.

The WEP reduces a worker's Social Security retirement or disability benefit in cases where the worker is receiving both a Social Security benefit and a pension based on employment not covered by Social Security. The WEP is designed to eliminate the windfall resulting from the weighted Social Security benefit formula which is intended to replace a higher proportion of wages for low-earning workers than for high-earning workers.

Active military service became covered under Social Security in 1957. Inactive duty by reservists (such as weekend drills) became covered under Social Security in 1988. A pension based on either type of service (active or inactive), if performed before 1957, does not trigger the WEP. The only military pension which triggers the ***455** WEP is a pension based on inactive duty after 1956 and before 1988. This produces arbitrary and inequitable results for a small, closed group of people who receive military pensions based, at least in part, on noncovered military reserve duty after 1956 and before 1988.

Under the GPO, spouse's and widow(er)'s benefits received by an individual based on his or her spouse's Social Security-covered work are reduced by two-thirds of the amount of any government pension to which the individual is entitled based on his or her own work in a government job not covered under Social Security.

In general, an individual is exempt from the GPO if the last day of his or her work in a government job was covered by Social Security. Thus, reservists who retired from military service before 1988 may be arbitrarily subject to the GPO depending on whether the last day of their duty status happened to be covered (active duty, such as 2-week training duty) and therefore

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exempt from the GPO or not covered (inactive duty) and therefore subject to the GPO.

****687** Explanation of provision

The provision would provide that military pensions based on service performed in the military reserves before 1988 would not trigger application of the GPO or WEP to the individual's Social Security benefits.

Effective date

The provision would be effective with respect to benefits payable for months after October, 1993.

Section 13008. Repeal of Facility-of-Payment Provision

Present law

As a general rule, when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits–for example, due to the earnings test–and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to the other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents).

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit deduction and should not actually receive the benefit check. However, the benefit is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

Although the facility-of-payment provision was intended as an administrative simplification, it in fact requires complex computations that are error-prone and difficult to automate. Further, the facility-of-payment provision confuses beneficiaries.

In cases where all of the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not ***456** apply and the withheld benefits are redistributed and paid directly to the remaining dependents.

Explanation of provision

The facility-of-payment provision would be repealed. A beneficiary who is subject to a deduction would have his or her benefits withheld, and the withheld amount would be redistributed and paid directly to the other dependents.

Effective date

The provision would be effective for benefits for months after December, 1994.

****688** Section 13009. Application of Subsequent Entitlement Guarantee to Maximum Family Benefits

Present law

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become reentitled to benefits due to death, retirement or disability. This "subsequent entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or PIA) of a worker who becomes reentitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the PIA in effect in the last month of the worker's prior entitlement to

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disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, when this guarantee was created, the guarantee does not extend to the Maximum Family Benefit (MFB) payable on the worker's record, which is determined based upon the PIA. (The MFB is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the MFB which is payable when the worker becomes reentitled to benefits or dies may be less than the MFB payable in the last month of the worker's prior entitlement to disability benefits.

Explanation of provision

The provision would make a conforming change in the Maximum Family Benefit, so that the guaranteed PIA would be the basis for calculating the guaranteed MFB.

Effective date

The provision would be effective for the MFB of workers who become reentitled to benefits or die (after previously having been entitled) after October, 1993.

Section 13010. Disclosure of Social Security Administration Information for Epidemiological Research

Present law

Current law prohibits Federal agencies from releasing personal information contained in an individual file without the written consent of the individual.

Prior to the 1989 Supreme Court decision United States Department of Justice v. Reporters Committee for Freedom of the Press (Reporters Committee), the Social Security Administration (SSA) ***457** would permit disclosure of personally identifiable information to epidemiological researchers believing that it was permitted to do so under the Freedom of Information Act (FOIA). Disclosure of personal information is permitted under FOIA when the public interest served by the disclosure outweighs the privacy interest served by withholding the information.

In the Reporters Committee decision, the Supreme Court restricted disclosures of personally identifiable information under FOIA, ruling that disclosure of personal information serves the public interest only when the requested information gives the public****689** insight into the Federal government's performance of its statutory duties.

As a result of the Reporters Committee decision, SSA has discontinued the practice of disclosing information from its files to epidemiological researchers.

Epidemiological research examines specific risk factors (such as exposure to chemical agents or specific medical treatments) that may cause disease by measuring the effect of these factors on a known population. For example, medical researchers may need to know which members of a research population have died or in which state they died (in order to follow-up on the cause of death). The information is usually requested by private researchers and colleges and universities conducting research on behalf of private entities.

Explanation of provision

The provision would require SSA, under certain circumstances, to disclose limited personally identifiable information for epidemiological research purposes only.

Under the provision, SSA would be required to comply with requests for information showing whether an individual is alive or deceased. However, the requestor must meet two requirements: (1) the information must be for epidemiological or similar

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research which the Secretary has determined shows a reasonable promise of contributing to a national health interest; and (2) the requestor must agree to reimburse the Secretary for providing such information and agree to comply with limitations on safeguarding and rerelease or redisclosure of such information, as specified by the Secretary.

Effective date

The provision would be effective upon enactment.

Section 13011. Prohibition of Misuse of Symbols, Emblems or Names Related to the Social Security Administration, Health Care Financing Administration and the Department of Health and Human Services

Present law

In 1988, Congress enacted a provision prohibiting the misuse of words, letters, symbols and emblems of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA). The purpose of the provision was to prohibit organizations from conveying the false impression to recipients of mailings or solicitations ***458** that the product was endorsed, approved, or authorized by SSA or HCFA.

The law permits the Secretary of Health and Human Services (HHS) to impose civil monetary penalties not to exceed $5,000 per violation or, in the case of a broadcast or telecast, $25,000 per violation. The total amount of penalties which may be imposed is limited to $100,000 per year.

****690** Amounts collected by the Secretary are deposited as miscellaneous receipts of the Treasury of the United States.

In May 1992, the Subcommittee on Social Security and the Subcommittee on Oversight held a joint hearing to examine the effectiveness of laws designed to prevent fraud though deceptive advertising and solicitation practices. Of particular interest to Members of the Subcommittees was the adequacy of section 1140 of the Social Security Act which prohibits the misuse of names, symbols and emblems of SSA and HCFA.

The Subcommittees heard testimony from the Commissioner of the Social Security Administration, Gwendolyn King, and representatives from the Office of Inspector General, Department of Health and Human Services and United States Postal Inspector as well as State Attorney's General and State Aging Agencies. The hearing prompted development of a proposal to strengthen section 1140.

Explanation of provision

Numerous witnesses testified that, because of the $100,000 annual limit on the total amount of penalties that can be levied against individuals for violations of section 1140 to $100,000 per year did not serve as an adequate deterrent to groups who can take in millions of dollars each year by engaging in deceptive practices. The provision would eliminate the provision in section 1140 which provides for an annual cap on penalties, to allow the Secretary to set fines at a level which is both reasonable and would provide a strong deterrent to organizations and individuals engaged in deceptive mailings and other violations of section 1140.

The provision would define a "violation" with regard to mailings as each individual piece of mail in a mass mailing. Regulations promulgated by the HHS Inspector General treat each piece of mail addressed to specific individuals as a violation. However, the regulations define an entire mass mailing addressed to "resident" as only one violation. The provision would strengthen the deterrent against deceptive mailings by making each piece of mail a violation.

Section 1140 would be amended to include the use of names, letters, symbols or emblems of the Department of Health and Human Services as protected items.

The provision would amend the provision in current law, which prevents a person from using names and symbols in a

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manner which such person "knows or should know would convey a false impression" of a relationship with SSA, HCFA, or HHS, to provide an alternate standard. In addition, to the above current standard, the provision would add a prohibition against the use of the names or symbols in a manner which "reasonably could be interpreted or construed as conveying" a relationship to SSA, HCFA, or HHS.

***459** In addition, the provision would repeal the Present law requirement that the Department of Health and Human Services obtain a formal declination from the Department of Justice (DOJ) before pursuing a civil monetary penalty case under section 1140. Since section 1140 is specific to activities related to agencies within the ****691** Department of Health and Human Services, there is no danger of overlap with other Department of Justice actions. Moreover, the Department of Justice has shown no interest in pursuing actions in this area. Clearance from DOJ has only delayed the assessment of penalties.

The provision would provide that penalties collected by the Secretary for violations of section 1140 would be deposited in the Old-Age and Survivors Insurance Trust Fund.

In response to numerous complaints from the public generally and concerns expressed by hearing witnesses regarding organizations that offer to provide individuals with Social Security forms for a fee, the provision would require groups to receive approval from SSA in order to engage in these activities. The provision would stipulate that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless it has obtained specific written authorization for such activity in accordance with regulations prescribed by the Secretary.

The provision would provide that any disclaimer found on a mailing or other item would not provide a defense against an action for violation of section 1140. Many consumers do not read, or cannot read, disclaimers on mass mailings. Similarly, disclaimers in other forms of media may not be heard or understood by the consumer. Thus, the provision would provide that any determination of whether there is a violation of section 1140 shall be made without regard to a disclaimer.

The HHS Secretary would be required to report annually to Congress detailing the number of complaints of deceptive practices received by SSA, the number of cases in which SSA sent a notice of violation of this section to an individual requesting that that individual cease misleading activities, the number of cases referred by SSA to the HHS IG, the number of investigations undertaken by the HHS IG, the number of civil monetary penalties formally proposed by the HHS IG in a demand letter, the total amount of civil monetary penalties assessed during the year, and the total amount of civil monetary penalties deposited in the OASI trust fund during the year. In addition, reflecting the view of Subcommittee Members that every individual should be afforded due process under the law, the Secretary would be required to report to the Committee the number of hearings requested by the respondents and the disposition of these hearings.

Finally, the provision would clarify that the stipulations of section 1140 would continue to be enforced by the Office of Inspector General of the Department of Health and Human Services. The Subcommittee expects that SSA and HCFA would continue their present practice of seeking voluntary compliance under the law before determining whether to refer cases to the Inspector General.

***460** Effective date

The provision would be effective upon enactment.

****692** Section 13012. Increase in Penalties for Unauthorized Disclosure of Social Security Information

Present law

Each year, the Social Security Administration (SSA) receives and maintains earnings information, including the names and addresses of employers, on over 130 million working Americans in its computer system. Employers are required to file annually with the Social Security Administration copies of their workers' W–2 statements. The statements contain the worker's social security numbers and the amount of wages the workers received during the year. In addition, each SSA file

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contains an individual's birth certificate information, such as date of birth, father's name and mother's maiden name. For those receiving social security benefits, the file contains a current address and monthly benefit amounts.

During the mid-1980's, SSA developed an automated record-keeping system which made beneficiary records and worker earnings reports, previously stored and available only from SSA's central office in Baltimore, easily accessible to employees in over 1300 local offices and teleservice centers around the country.

In September 1992, the Subcommittee on Social Security held a hearing to examine allegations that employees of the Department of Health and Human Services (HHS) had sold confidential information from SSA files to individuals known as information brokers.

The United States Attorney from Newark, New Jersey, testified that in December 1991, following a 2-year nationwide investigation, 24 individuals were arrested for engaging in schemes to buy and sell information from Government computer files. Among those arrested were employees of the Social Security Administration and the Department of Heath and Human Services, Office of Inspector General (IG).

The Social Security Act includes provisions which prohibit the unauthorized disclosure of information contained in Social Security Administration files. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding $1,000 or by imprisonment not exceeding 1 year, or both.

Explanation of provision

The provision would stipulate that unauthorized disclosure of information and fraudulent attempts to obtain personal information under the Social Security Act would be made a felony. Each occurrence of a violation would be punishable by a fine not exceeding $10,000 or by imprisonment not exceeding 5 years, or both.

Effective date

The provision would be effective upon enactment.

****693*461** Section 13013. Simplification of Employment Taxes on Domestic Services

Present law

Individuals who hire domestic employees such as babysitters, housekeepers, and yard workers are required to withhold and pay employment taxes when the worker's wages exceed certain thresholds. (Individuals who hire independent contractors to provide domestic services are excluded from these requirements.) For Social Security, the wage threshold is $50 per quarter; for Federal unemployment insurance, it is $1,000 per quarter. When the $50 threshold is reached, the employer must file a quarterly report (form 942) with the Internal Revenue Service, submitting with it the required Social Security tax for both the employer and the employee. The employer must also provide the employee and the Social Security Administration with a Wage and Tax Statement (form W–2) at the end of the year. When the $1,000 unemployment insurance wage threshold is reached in any calendar quarter, the employer must file a report (form 940) with the IRS at the end of the year, submitting the required tax.

In addition, employers of domestic workers must: notify employees who may be eligible for the earned income tax credit of the existence of this credit; withhold income tax if the employee requests it and the employer agrees; file and pay State unemployment insurance tax in each quarter in which the State unemployment insurance wage threshold (equal to the $1,000 Federal threshold in 45 States) is reached; and, in some States, report wages paid to domestic to the State for purposes of State income tax.

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Explanation of provision

The provision would:

–change the threshold for withholding and paying Social Security taxes on domestic workers from $50 per quarter to $1,800 annually in 1994 and index it thereafter for increases in average wages in the economy;

–adjust the Social Security tax threshold retroactively for increases in average wages in the economy since 1950 and annualize the threshold retroactively. No tax refunds would be provided;

–require individuals who employ only domestic workers to report on a calendar-year basis any Social Security or Federal unemployment tax obligations for wages paid these workers and authorize the Secretary of the Treasury to revise Federal form 1040 to enable such employers to report both taxes on their own Federal income tax returns;

–include domestic employers' Social Security and Federal unemployment taxes in estimated tax provisions, thereby enabling these employers to satisfy their tax obligations through regular estimated tax payments or increased tax withholding from their own wages;

–authorize the Secretary to enter into agreements with States to collect State unemployment taxes in the manner described above; and ****694*462** "require the Secretary to provide to domestic employers a comprehensive package of informational materials, including all requirements of Federal law and a notification that they may also be subject to State unemployment insurance and workers compensation laws.

Effective date

The provision would generally apply to remuneration paid in calendar years beginning after December 31, 1993.

Section 13014. Increase in Authorized Period for Extension of Time to File Annual Earnings Report

Present law

In general, individuals under age 70 who receive Social Security retirement or survivors benefits must file an annual report of their earnings with the Social Security Administration for any taxable year in which their earnings or wages exceed the annual exempt amount of earnings under the Social Security earnings test. These reports are due to be filed by the same date as Federal income tax returns, the fifteenth day of the fourth month after the close of the taxable year (normally April 15). Individuals may be granted a reasonable extension of time for filing an earnings report if there is a valid reason for delay, but not more than 3 months. An extension of time for filing an income tax return may be granted for up to 4 months.

Explanation of provision

The time for which an extension could be granted for filing an earnings report would be increased to 4 months.

Effective date

The provision would be effective with respect to reports of earnings for taxable years ending on or after December 31, 1993.

Section 13015. Reallocation of a Portion of the Old-Age and Survivors' Insurance Payroll Tax to the Disability Insurance Trust Fund

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Present law

Employees and employers each pay a tax of 7.65 percent on earnings up to a specified ceiling. Of the 7.65 percent, 1.45 percent is allocated to the Hospital Insurance Trust Fund, 5.6 percent is allocated to the Old-Age and Survivors Insurance Trust Fund, and 0.6 percent is allocated to the Disability Insurance Trust Fund. The 15.3 percent tax on net earnings from self-employment is similarly allocated to the HI Trust Fund (2.90 percent), the OASI Trust Fund (11.2 percent) and the DI Trust Fund (1.2 percent). As a result of the 1983 Social Security Amendments (P.L. 98–21), 0.71 percent will be allocated to the DI Trust Fund beginning in the year 2000.

In its 1993 report to Congress, the Social Security Board of Trustees determined that, under its intermediate economic assumptions, the DI Trust Fund will be depleted during 1995. To address the immediate financial shortfall facing the fund, the Board ****695*463** called for a reallocation of 0.275 percent of the employer and employee tax rate, each, and 0.55 of the self-employment tax rate from the OASI Trust Fund to the DI Trust Fund, effective for 1993 and future years. The Board also called for additional research to establish the causes of the projected DI program shortfall and to determine whether it is a temporary or longer-term phenomenon.

The Clinton Administration has also proposed a reallocation of 0.275 percent.

Explanation of provision

The provision would reallocate 0.275 percent of the employer and employee Social Security payroll tax rate, each, and 0.55 of the self-employment tax rate from the OASI Trust Fund to the DI Trust Fund, effective for 1993 and future years. The combined OASDHI tax rate of 7.65 percent would remain unchanged.

In addition, the Secretary of Health and Human Services would be required to conduct a comprehensive study of the reasons for rising costs in the DI program. The study would determine the relative importance of: (a) increased numbers of applications for benefits, (b) higher rates of benefit allowances, and (c) decreased rates of benefit terminations in increasing DI program costs. It would also identify, to the extent possible, underlying social, economic, demographic, programmatic, or other trends responsible for changes in DI applications, allowances, and terminations. No later than December 31, 1995, the Secretary would be required to issue a report to the House Committee on Ways and Means and the Senate Committee on Finance summarizing the results of the study and, if appropriate, making legislative recommendations.

Effective date

The provision would apply to wages paid after December 31, 1992, and to self-employment income for taxable years beginning after this date.

Section 13016. Extension of Disability Insurance Program Demonstration Project Authority

Present law

Section 505(a) of the Social Security Disability Insurance Amendments (P.L. 96–265), as extended by the Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239) and the Omnibus Budget Reconciliation Act of 1990 (P.L. 102–508), authorizes the Secretary of Health and Human Services to waive compliance with the benefit requirements of titles II and XVIII for purposes of conducting work incentive demonstration projects to encourage disabled beneficiaries to return to work. The authority will expire October 1, 1993.

Explanation of provision

The Secretary's authority to conduct disability work incentive demonstration projects would be extended through June 10, 1996.

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Effective date

The provision would be effective upon enactment.

****696*464** Section 13017. Technical Corrections

The provision would make clerical corrections to sections of title II of the Social Security Act which contain typographical errors, erroneous references, circular cross references, inconsistent margination, incorrect punctuation, and references to outdated versions of the Internal Revenue Code. These technical corrections would not change the meaning of any section of the Social Security Act.

Section 13018. Cross-Matching of Social Security Account Numbers and Employer Identification Numbers Maintained by the Department of Agriculture

Present law

Under current law, the Department of Agriculture is allowed to collect and maintain a list of the names, social security numbers and employer identification numbers of the owners and officers of retail grocery stores which redeem food stamps. The list is used only to keep track of grocery store operators who have been sanctioned for violations under the Food Stamp Act.

Explanation of provision

The provision would permit the Department of Agriculture to share the list of names and identifying numbers with other Federal agencies for the purpose of investigating both incidents of food stamp fraud and violations of other Federal laws.

The Committee intends that the Department of Agriculture would use this authority to report to appropriate Federal agencies potential violations of other Federal laws discovered in the course of conducting investigations of food stamp fraud. For example, the Committee intends that the Department of Agriculture would be authorized to report to the Internal Revenue Service information relating to violations of Federal income tax laws.

Effective date

The provision would be effective upon enactment.

Section 13019. Prohibition of Misuse of Symbols, Emblems, or Names Related to the Department of the Treasury and the Internal Revenue Service

Present law

There is no provision in present law prohibiting the use of titles, symbols, emblems, and names of the Department of the Treasury (and its subsidiary agencies) in connection with advertisements, mailings, solicitations, or other business activities.

Explanation of provision

The provision would prohibit the use in advertisements, solicitations, and other business activities of words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or

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subdivisions of the Department, including the Internal Revenue Service) in a manner which could reasonably be interpreted as conveying a connection ****697*465** with or approval by the Department of the Treasury. The prohibition would apply not only to official words, titles, abbreviations, initials, symbols and emblems, but also to colorable imitations thereof.

The bill would establish a civil penalty of not more than $5,000 per violation (or not more than $25,000 in the case of a broadcast). In addition, the bill would establish a criminal penalty of not more than $10,000 (or not more than $50,000 in the case of a broadcast) or imprisonment of not more than 1 year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation would be made without regard to the use of a disclaimer of affiliation with the Federal Government. The Secretary of the Treasury would be required to provide to the Committee on Ways and Means and the Committee on Finance, no later than May 1, 1995, a report on enforcement activities relating to the implementation of the provision.

Effective date

The provisions would be effective upon enactment.

Section 13020. Availability and Use of Death Information Under the Old-Age, Survivors, and Disability Insurance Program

Present law

Under section 205(r) of the Social Security Act, the Secretary of Health and Human Services is authorized to enter into voluntary contracts with the States for the purpose of obtaining death certificate and other related information to be used in the administration of the Social Security Act. In addition, under section 205(r), the Secretary is authorized to redisclose this information to other Federal, State, and local agencies for certain specified purposes, subject to such safeguards as the Secretary determines are necessary to prevent any unauthorized redisclosure. However, because these contracts with the States are entirely voluntary, the States are able, at their discretion, to include contract provisions preventing the Secretary from redisclosing this information to other Federal, State, and local agencies.

Explanation of provision

The provision would prohibit a State from using an individual's Social Security account number in the administration of any driver's license or motor vehicle registration law where the State has not entered into a contract to provide death certificate and related information to the Secretary, or where the State is a party to a contract with the Secretary which includes any restrictions on the use of the death information provided to the Secretary by the State, except to the extent that such use may be restricted under 205(r)(g) of the Social Security Act.

In addition, the provision would require the Secretary of Health and Human Services to conduct a study of possible improvements in the current methods of gathering and reporting death information by Federal, State, and local governments which would result in more efficient and expeditious handling of such information. By ****698*466** June 1, 1994, the Secretary would be required to submit a written report to the Committee on Ways and Means and the Committee on Finance setting forth the results of this study, together with such administrative and legislative recommendations as the Secretary considers appropriate.

Effective date

The provisions would be effective 1 year after the date of enactment.

SUBTITLE B–HUMAN RESOURCES AMENDMENTS

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A. CHILD WELFARE SERVICES, FOSTER CARE AND ADOPTION ASSISTANCE

Section 13211. Entitlement Funding for Child Welfare Services Designed to Strengthen and Preserve Families

Present law

The child welfare services program under title IV–B of the Social Security Act authorizes 75 percent Federal matching grants to States for child welfare services. These funds may be used: (1) to protect and promote the welfare of children; (2) to prevent or remedy, or assist in the solution of problems that may result in, the neglect, abuse, exploitation or delinquency of children; (3) to prevent the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (4) to restore children to their families by the provision of services to the child and the family; (5) to place children in adoptive homes if restoration is not possible or appropriate; and (6) to assure adequate foster care when children cannot return home or be placed for adoption.

The authorization level for the title IV–B program is $325 million per fiscal year. Funds are distributed to the States and outlying areas on the basis of their under-age-21 population and per capita income. The Secretary may, where appropriate, make payments directly to an Indian tribal organization. For fiscal year 1993, appropriations for the program total $295 million.

Title IV–B does not include a specific set-aside for services designed to strengthen and preserve families, although States have the flexibility to use their title IV–B child welfare services funds for such services.

Explanation of provision

(a) Authorization of appropriations.–A new subpart 2 would be added at the end of title IV–B (the current provisions of title IV–B would be a new subpart 1), which would establish a capped entitlement amount for the provision of family preservation and family support services. The authorization level for the capped entitlement would equal $60 million for fiscal year 1994; $135 million for fiscal year 1995; $240 million for fiscal year 1996; $360 million for fiscal year 1997; and $600 million for fiscal year 1998. The Committee intends that, if reauthorized, the amount in subsequent fiscal years would equal the fiscal year 1998 amount, adjusted for inflation by ****699*467** the consumer price index. Funds allotted for a fiscal year would have to be expended in the fiscal year or in the succeeding fiscal year.

(b) Use of funds.–States would use the funds to develop and establish, or to expand, and to operate a program of family preservation services and community-based family support services.

The term “family support services” is defined to mean community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including foster, adoptive and extended families), to increase parents’ confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development.

The term “family preservation services” is defined to mean services for children and families designed to help families (including adoptive, foster and extended families) at risk or in crisis, including:

(i) service programs designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption, with a legal guardian, or, where appropriate with respect to a child, in some other planned, permanent living arrangement;

(ii) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

(iii) service programs designed to provide follow-up care to families to whom a child has been returned following a foster

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care placement;

(iv) respite care of children to provide temporary relief for parents and other caregivers (such as foster parents); and

(v) services designed to improve parenting skills.

(c) Allotment of funds.–One percent of the amount authorized for expenditure under the new entitlement would be reserved for the Secretary for evaluation, research, training, and technical assistance.

For a 4-year period beginning fiscal year 1995, a portion of the entitlement funds would be made available for grants for assessments of State courts (see item 3 below).

One percent of the amount authorized would be reserved for allotment to tribal organizations of Indian tribes that have submitted a plan (which need not meet any State plan requirement specified below that the Secretary determines is inappropriate with respect to the tribe) and whose allotment would be greater than $10,000. Tribal allotments would be made based on the number of children in the tribe relative to the number of children in all tribes with approved plans, as determined by the Secretary on the basis of the most current and reliable information available.

The allotment of entitlement funds to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa would be determined according to the same formula as in effect under the existing title IV–B child welfare services authorization. Remaining funds would be distributed to each other State according to an allocation formula, based on the ****700*468** State's share of children in all States receiving food stamp benefits. States would be entitled to payments equal to their allotments, for use in paying not more than 75 percent of the costs of activities under the approved State plan. The remaining 25 percent of costs must be paid with funds from non-Federal sources.

(d) Sunset of entitlement.–States and tribal organizations would be entitled to payment for fiscal years 1994 through 1998. The intent of this "sunset" provision is to allow Congress to review the new entitlement program before making the program permanent, not to imply an assumption that the program would expire in the budget baseline for years after fiscal year 1998.

(e) State plan requirements.–To be eligible to receive its share of entitlement funds for a fiscal year, a State must have an approved plan, developed jointly by the Secretary and the State agency, after consultation with appropriate public and nonprofit private agencies and community-based organizations. For fiscal year 1994, however, a State that has not completed development of its plan may receive, from its allotment, up to $1 million for plan development, plus any remaining portion of its allotment to provide services to children and families, so long as the State has submitted an appropriate application to the Secretary. The State would have to expend its allotment for fiscal year 1994 in fiscal year 1994.

The State plan must:

(i) provide that the State child welfare agency will administer or supervise the administration of the program;

(ii) document the required involvement of public and private agencies and community-based organizations in developing the plan;

(iii) declare (and periodically update) program goals for each 5-year period under the plan, and the methods to be used in measuring progress toward the goals; contain commitments to perform interim and final progress reviews and, on the basis of the final review, to prepare a final report and to develop goals for the next 5-year period;

(iv) provide for coordination, to the extent feasible and appropriate, with other Federal or Federally-assisted programs serving the same populations;

(v) provide assurances that not less than 90 percent of expenditures will be used for services for children and families, and that significant portions of the 90 percent will be expended for family preservation services and for community-based family support services;

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(vi) provide that by the beginning of the sixth fiscal year during which the plan is in effect, programs under the plan will be available on a statewide basis, to the extent feasible and appropriate;

(vii) provide assurances that the State will annually prepare a description of the service programs to be made available in the following fiscal year, the populations that will be served, and the geographic areas in the State in which the services will be available. The description must be furnished to the Secretary, and made available to the public, when the initial plan is submitted and, in succeeding fiscal years, by the end of the third quarter of the preceding fiscal year;

****701*469** (viii) provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of the plan;

(ix) provide assurances that Federal funds will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the same purposes, and that the State will furnish reports as required demonstrating the State's compliance with this provision; and

(x) provide that the State will furnish reports and participate in evaluations as required by the Secretary.

Effective date

October 1, 1993.

Section 13211. Evaluations, and Reports on Evaluations

Present law

Section 426 of title IV–B authorizes funds for research, training and demonstration projects, including grants to: (a) public and nonprofit institutions of higher learning and child welfare agencies for research or demonstration projects in the field of child welfare that are of regional or national significance and for special projects to demonstrate new methods that will advance child welfare; (b) State and local child welfare agencies for research to encourage experimental and special types of child welfare services; and (c) institutions of higher learning to train personnel for work in the child welfare field.

****702** Explanation of provision

Would require the Secretary to evaluate programs of family support and family preservation services for purposes of determining their effectiveness, in accordance with criteria developed by the Secretary. In developing the criteria, the Secretary must consult with appropriate parties, such as State child welfare agencies, persons administering child and family services programs for private, nonprofit organizations with an interest in child welfare, and other persons with recognized expertise in the evaluation of child and family services programs or related programs. The Secretary would have to coordinate these evaluations, to the extent feasible, with evaluations by the States of the effectiveness of their programs. The Secretary must report evaluation findings to the Congress by December 31, 1997.

Effective date

October 1, 1993.

Section 13212. Grants to State Courts to Assess and Improve Handling of Proceedings Related to Foster Care and Adoption

Present law

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No provision.

***470** Explanation of provision

A sum of $5 million for fiscal year 1995, and $10 million for each of fiscal years 1996 through 1998, would be reserved from the new entitlement under title IV–B for a 4-year program of grants to the highest State courts. The grant would enable the courts to conduct assessments of the role, responsibilities and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts) to determine the advisability or appropriateness of foster care placement, to determine whether to terminate parental rights, and to legally recognize the adoption of a child, and to implement changes recommended by the assessments.

The assessments would have to identify the requirements imposed on State courts, with respect to these proceedings, addressing separately:

(a) rules, standards and criteria imposed under State laws (including laws implementing parts B and E of title IV, laws relating to child abuse and neglect, or any other laws on related matters), applicable to decisions concerning the placement of a child, the parent-child relationship, or other matters of child welfare, including determinations: (i) whether to remove a child from or return the child to its home, (ii) whether to place a child in foster care or to continue a foster care placement, (iii) whether to terminate parental rights, (iv) whether to place a child for adoption or in another permanent arrangement, and (v) whether to set aside or to make final an adoption; and

(b) procedures and rules, imposed by law or adopted voluntarily by the court system, addressing matters such as choice between administrative and judicial proceedings; timetables for proceedings; procedural safeguards for parents, guardians, and children; and general rules for conduct of the proceeding.

Additionally, the assessments would have to: evaluate the performance of the court system in implementing these requirements; assess the extent of conformity of State court rules and practices with the recommendations of national organizations concerned with the permanent placement of children; assess the extent to which particular requirements imposed on State courts facilitate or impede achievement of title IV–B and IV–E program goals, or impose significant burdens on the courts; and make specific recommendations for improvement (including recommendations for changes in State or Federal laws, regulations or policies; changes in procedures and practices of the courts or of State child welfare and foster care agencies; additional education or training of court or agency personnel; collection and dissemination of additional data or information; or increases in manpower, reductions in numbers of case reviews, or other changes needed to enable the courts to manage their caseloads).

In order to be eligible for a grant, a highest State court must submit to the Secretary, at such time and in such form as the Secretary may require, an application containing a timetable, budget and methodology for conducting the assessment; a demonstration of cooperation with the State child welfare agency and foster care citizen review board (if any); assurances that grant funds not needed for the assessment would be used to implement recommended ****703*471** changes, and that grant funds would not supplant other State or local funds used for similar purposes; a commitment to furnish to the Secretary interim and final reports; and such other information as the Secretary might require.

Each court with an approved application would be allotted an amount, for each of fiscal years 1995 through 1998, equal to the sum of: (1) $75,000 for fiscal year 1995, and $85,000 for each of the 3 succeeding fiscal years, plus (2) a share of the remainder based on the State's share of individuals under age 21.

Courts could use grant funds without providing local matching in fiscal year 1995, but would have to provide 25 percent State or local matching of grant funds for the 3 remaining years.

Effective date

Upon enactment.

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Section 13213. Protections for Foster Children

Present law

Under current law, in order to receive its share of the title IV–B allocation in excess of $141 million, each State is required under section 427(a) of title IV–B to conduct an inventory of children in foster care; and to implement and operate, to the satisfaction of the Secretary, a tracking system for children in foster care, a case review system for children in foster care, and a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship. Currently, all States have chosen to be reviewed for compliance with these requirements and are eligible to receive the title IV–B incentive funds.

Further, under section 427(b), if the appropriations for the title IV–B program equal $325 million for 2 consecutive years, a State does not receive its title IV–B allotment in excess of its share of the 1979 funding level unless it has met all the section 427 requirements outlined above, and in addition, has implemented a preplacement preventive services program designed to help children remain with their families. This additional incentive mechanism has never been triggered. However, States that have elected to provide Federally-supplemented foster care payments for voluntarily-placed foster children are required to implement all section 427 protections, including the preplacement preventive services program. In fiscal year 1989, 22 States claimed Federal matching for children in foster care under voluntary placement agreements, and 50 States reported they were eligible to claim such matching.

Explanation of provision

Beginning for fiscal year 1995, would repeal section 427 of title IV–B, which links the payment of certain title IV–B funds to the implementation of certain protections for children in foster care. The provision would require that the State plan for subpart 1 of title IV–B provide for the foster care protections currently outlined in section 427, including: an inventory of children in foster care; a tracking system for children in foster care; a case review system for children in foster care; a service program designed to help children ****704*472** in foster care return to their families; and a preplacement preventive services program which is designed to help children remain with their families.

In addition, by 12 months after enactment, States would be required to review State laws and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including laws and procedures providing for legal representation of such children), and, by 24 months after enactment, to enact and implement such laws and procedures as the State determined to be necessary to enable permanent decisions to be made expeditiously regarding the placement of such children.

Also, would amend current law to provide that funds withheld or recovered from a State based on its failure to comply substantially with these protections could not be reallotted among other States.

The amendments could not be construed to permit any State to interrupt the provision of the foster care protections described in section 427 (as in effect on the effective date of the amendments).

Effective date

October 1, 1994.

Section 13214. State Plan Requirement Regarding the Indian Child Welfare Act

Present law

The Indian Child Welfare Act (P.L. 95–608) includes a number of State requirements relating to the foster care or adoptive placement, or termination of parental rights, of Indian children. There is currently no statutory link between the Indian Child

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Welfare Act and the child welfare services programs under the Social Security Act.

Explanation of provision

A State plan for title IV–B must contain a description, developed after consultation with tribal organizations in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.

Effective date

October 1, 1994.

Section 13215. Child Welfare Traineeships

Present law

Title IV–B authorizes such sums as may be necessary to enable the Secretary to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

Explanation of provision

Grants could be awarded by the Secretary to institutions of higher learning for child welfare traineeships with stipends only where the grant application provides assurances that:

(a) students given stipends would have to agree to participate in training at a child welfare agency and either to serve ****705*473** in a public or private child welfare agency for a period as long as that in which the training was received, or to repay the cost (or an appropriately pro-rated part) of the stipend, plus interest and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary). Exceptions to repayment may be prescribed by the Secretary in regulations;

(b) the institution would enter into agreements with child welfare agencies for on-site training of stipend recipients, accept applications from individuals already employed in the field of child welfare services, and track, for a period of 3 years after completion of a course of study, the employment record of each former student.

Effective date

Would apply to grants awarded on or after April 1, 1994.

Sections 13216–13217. Changes to Reimbursement Policy under Title IV–E

(a) Dissolved adoptions–

Present law

Under title IV–E, the Federal government reimburses States for foster care maintenance payments made on behalf of children from AFDC-eligible families. A child on whose behalf title IV–E adoption assistance payments are made (and whose adoption has been legally finalized by a judicial decree of adoption), but whose adoption is subsequently set aside by the court and who returns to foster care, is often not eligible for title IV–E foster care maintenance and adoption assistance payments, because the income or resources of the adoptive family has made the child ineligible.

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Explanation of provision

The provision would permit States to make foster care maintenance payments under title IV–E on behalf of a child: (i) with respect to whom such payments were previously made, (ii) whose adoption has been set aside by a court, and (iii) who meets certain eligibility requirements under title IV–E (i.e., the child was removed from the home pursuant to a voluntary placement agreement or judicial determination; the child is under the responsibility of the State; and the child has been placed into foster care as a result of a voluntary placement agreement or judicial determination).

Effective date

October 1, 1995.

(b) Time frame for judicial determinations on voluntary placements–

Present law

No payment may be made under title IV–E to reimburse a State for foster care maintenance payments in the case of any child who was removed from the home as a result of a voluntary placement agreement and has remained in the placement for more than 180 days, unless there has been a judicial determination within the ****706*474** first 180 days of the placement to the effect that the placement is in the best interests of the child.

Explanation of provision

With respect to any child who remains in foster care under a voluntary placement agreement for more than 180 days without there having been a judicial determination within the first 180 days of the placement to the effect that the placement is in the best interests of the child, the bill permits Federal reimbursement for foster care maintenance payments beginning 180 days after the date that such judicial determination is finally made.

Effective date

The amendment applies to foster care maintenance payments made under State plans in fiscal year 1996 and thereafter, on behalf of children in foster care on or after October 1, 1995.

Section 13218. Study of Reasonable Efforts

Present law

State plan requirements for the title IV–E foster care maintenance payments program include a requirement that, in each case, reasonable efforts be made (a) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home.

Explanation of provision

The bill would require the Secretary to conduct a study of the ways in which States implement the “reasonable efforts” requirement of current law. The Secretary’s study would consider:

(a) States’ standards used to determine what steps to take, and whether and for how long to continue efforts–(1) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home; and (2) to return a child home rather than seek some other planned, permanent placement; and

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(b) the responses of the courts to the State actions described in (a) above, including whether such responses facilitate or impede State agencies' achievement of the objectives of the reasonable efforts requirement.

The Secretary would have to submit a report to Congress within 18 months of enactment, with such recommendations as the Secretary finds appropriate, based on the results of the study. The report must describe State practices found effective in achieving the objectives of the reasonable efforts requirement, and if appropriate, must set forth model standards for consideration by the States.

Effective date

Upon enactment.

****707*475** Section 13219. Enhanced Match for Automated Data Systems

Present law

Section 479 of title IV–E provides for the implementation of a foster care and adoption data collection system. The data collection system is required to provide national information with respect to foster and adoptive children.

Under title IV–E, Congress established an Advisory Committee on Adoption and Foster Care Information, to report to the Secretary and Congress its evaluations and recommendations with respect to establishing, administering and financing the national foster care and adoption data collection system. In its report, the Advisory Committee included, among other recommendations, that the Federal government should provide funding for 100 percent of the add-on developmental expenses incurred by States, plus Federal reimbursement at a rate of 50 percent for ongoing operational costs.

Explanation of provision

Would provide for 90 percent matching of State expenditures for planning, design, development or installation of statewide mechanized data collection and information retrieval systems (including 90 percent of the full amount of expenditures for hardware components). To qualify for matching, systems would have to comply with regulations concerning collection of data relating to adoption and foster care; to the extent practicable, be compatible with other State data collection systems relating to child neglect and abuse and to eligibility for AFDC; and be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs under title IV–E and title IV–B. Would provide 50 percent matching of State expenditures for operation of the systems. Expenditures for the systems would be considered administrative expenditures under the State's title IV–E plan, regardless whether the systems are used in part to collect data on children ineligible for title IV–E benefits. The 90 percent match would be in effect for fiscal years 1994 through 1996; the rate would thereafter be 50 percent.

Effective date

Effective with respect to expenditures under title IV–E beginning fiscal year 1994.

Section 13220. Periodic Reevaluation of Foster Care Maintenance Payments

Present law

Each State establishes its own foster care maintenance payment levels. Under current title IV–E law, as part of the State plan requirements, States must periodically review their foster care maintenance and adoption assistance payments.

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Explanation of provision

The bill amends title IV–E to require that States review their foster care maintenance payment and adoption assistance levels at ****708*476** least every 3 years to assure their continuing appropriateness, and report the results of the review to the Secretary and the public in such form and manner as the Secretary may by regulation require.

At a minimum, the report must include a statement of the manner in which the foster care maintenance payment level is determined, including information on how the payment level compares to the actual cost of foster care; information regarding the basic payment level and whether this level includes an amount to cover the cost of clothing; and information regarding whether the payment level varies by the type of care or the special needs or age of the child, and, if so, the payment levels for each special needs, care or age category. States that do not pay a differential rate for children who are HIV-positive or have AIDS, or children who are drug-addicted or have complications due to drug or alcohol exposure, or have other severe special needs, must explain the reasons for this decision. In addition, the report must include information on any caps imposed by the State on adoption assistance payment levels.

Effective date

October 1, 1994.

Section 13222. Case Review System Requirements

Present law

In order to receive certain incentive funds under title IV–B, States are required to implement and operate, in addition to other activities, a case review system for each child receiving foster care under the supervision of the State. Section 475 of title IV–E defines "case review system" to mean a procedure for assuring that: (a) each child has a case plan meeting certain specified requirements; (b) the status of each child is reviewed at least once every 6 months by a court or by administrative review; and (c) each child in foster care is guaranteed a dispositional hearing in a family or juvenile court or another court of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement in foster care (and periodically thereafter during a continuation of foster care).

The dispositional hearing determines: (a) the future status of the child, including but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis; and (b) for a child who is age 16 or older, the services needed to assist the child to make the transition to independent living.

Explanation of provisions

(a) Dispositional hearing.–Effective upon enactment, the bill revises the definition of "case review system." Under the revised definition, the initial dispositional hearing would continue to take place no later than 18 months after the original placement in foster care, but subsequent hearings would take place at least every 12 months thereafter (rather than "periodically").

****709*477** (b) Health care plans for foster children.–Each child's case plan would have to include a record that the foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic, and treatment services.

In addition, the Committee requests that the Secretary review the efficiency and performance of State foster care programs, including citizen review panels or citizen participation in State administrative reviews, and compare them to the simple administrative reviews by State agencies. The Secretary's report should examine impediments to additional States adopting

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citizen participation in foster care reviews, and possible incentives for further State implementation of such citizen participation. The report would be due 12 months after the date of enactment.

Effective date

The amendment would apply to case plans established or reviewed on or after January 1, 1994.

Section 13223. Amendments to the Independent Living Program

Present law

The independent living program under title IV–E is a State entitlement program designed to help ease the transition of foster children age 16 and older to independent living. States may include children who are not receiving title IV–E foster care benefits in the program, and may also allow children who have left foster care, up to age 21, to participate.

Under current law, the AFDC resource test applies to a foster child on whose behalf the State is claiming reimbursement under the title IV–E foster care maintenance payments program. Should such a child accumulate assets above those allowed under the AFDC test while on foster care: (1) the child may become ineligible to participate in the independent living program, if the State in which the child resides allows only title IV–E eligible foster children to participate; and (2) the child may lose medicaid benefits, since foster children receiving State-only benefits are not categorically eligible for medicaid and generally must meet a resource test.

Youth who leave foster care and apply for or receive AFDC benefits are subject to the same rules regarding income and resources as other AFDC applicants and recipients.

The authorization for the independent living program expired at the end of fiscal year 1992. The entitlement ceiling in fiscal year 1992 was $70 million.

Explanation of provisions

(a) Treatment of assets of youth participating in independent living program.–Effective beginning fiscal year 1996, with respect to a child who is receiving assistance under an independent living program, reasonable amounts (as determined by the State) of the assets of the child which would otherwise be regarded as resources for purposes of determining eligibility for programs under title IV may be disregarded for the purpose of allowing the child to establish ****710*478** a household, pursue further education, or otherwise complete the transition to independent living.

(b) Permanent extension of program.–The authorization for the independent living program would be made permanent, effective October 1, 1992, at $70 million per year.

Section 13224. Elimination of Foster Care Ceiling and Transfer Authority

Present law

The foster care ceilings and the authority to transfer foster care funds to child welfare services expired September 30, 1992.

Prior to the expiration, the law imposed mandatory State-by-State ceilings on foster care funds if the Federal appropriation for child welfare services reached a specified trigger level, most recently $325 million. In the absence of a mandatory foster care ceiling, States could elect to operate under a voluntary ceiling. A State could use one of several methods to calculate the most favorable ceiling. The mandatory ceiling did not go into effect after 1981. By 1992, the majority of States were operating significantly above their respective ceiling levels.

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Under a voluntary ceiling, a State could transfer a portion of its unused foster care funds to its child welfare services program. However, the amount transferred, together with the State's IV–B allocation, could not exceed what the State would have received if the child welfare services funding had triggered the ceiling. It is estimated that the amount transferred by States equaled less than $1 million for fiscal year 1991, and no funds were transferred for fiscal year 1992.

Explanation of provision

The bill eliminates obsolete language in the Social Security Act regarding a mandatory and voluntary ceiling on foster care funds, and language regarding the transfer of "unused" foster care funds to the child welfare services program.

Effective date

October 1, 1993.

Section 13225. Training of Agency Staff and Foster and Adoptive Parents

Present law

States are entitled under the title IV–E program to a payment equal to 75 percent of expenditures for the training of personnel employed or preparing for employment by the State or local child welfare agency, and for the training of foster and adoptive parents. This enhanced Federal match expired at the end of fiscal year 1992.

Explanation of provision

The authorization for Federal reimbursement at 75 percent under title IV–E for training is permanently extended.

****711*479** Effective date

Effective retroactive to October 1, 1992.

Section 13226. On-Site Reviews and Audits of State Claims for Foster Care and Adoption Assistance

Present law

Section 471(a)(13) of title IV–E requires, as a component of State plans under title IV–E, that States arrange for periodic and independent audits of their activities under titles IV–B and IV–E, to be conducted at least once every 3 years. In practice, the Secretary may disallow expenditures for Federal reimbursement under title IV–E as a result of several review procedures, including audits conducted pursuant to section 471(a)(13). Disallowances may result from audits conducted by the Inspector General, regional office reviews of quarterly expenditure reports submitted by States as part of the claims reimbursement process, or Federal financial reviews.

Financial reviews consist of two stages and are based on a statistically valid sample of between 200 and 300 payment units in the State. In stage one, 50 payment units of the total sample are reviewed. If the stage one review indicates that the State's systems are operating accurately and proper payments are being made, a stage two review is not conducted. However, disallowances of ineligible claims may be made during a stage one review, based only on the individual payments reviewed. If State systems do not appear to be operating properly or if the stage one review indicates errors in excess of established error rates, a stage two review is conducted. A minimum of 150 payment units, in addition to the 50 reviewed during stage one, will be reviewed. Disallowances will be made based on extrapolation from the sample to the universe of claims

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submitted for payment during the period reviewed.

Title IV–E financial reviews are conducted retrospectively, after conclusion of the fiscal year. However, States are not generally reviewed annually, and States may be reviewed for more than 1 fiscal year at a time.

States may appeal disallowances to the Departmental Appeals Board.

Explanation of provision

Would require the Secretary to:

(a) publish regulations to be used in on-site reviews and audits of State title IV–E programs, which must specify the criteria to be used to determine the appropriateness of expenditures identified in sampled case files, the criteria to be used to determine the appropriateness of expenditures for child placement services and administration, and types of erroneous expenditures which will be disregarded for purposes of determining the appropriateness of payments (including erroneous payments resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided by the State to the Secretary); and

(b) after consultation with State agencies, furnish to the State agencies a written description of the procedures and methodologies to be used in on-site reviews and audits, which ****712*480** must specify the methods and procedures to be used to select a sample of case files for review or audit, the procedures to be used in reviewing or auditing sampled case files to determine erroneous expenditures, the procedures to be used to review or audit State expenditures for child placement services and plan administration, and the methodology to be used to extrapolate from review or audit findings to all expenditures.

The Secretary could not use, in a review or audit of State expenditures during a fiscal year, any criteria, methodology, or procedure, unless published in a final regulation or furnished to the State in writing (as applicable) not later than 3 months before the beginning of that fiscal year.

Effective date

The amendment made by this section would be effective with respect to State programs in fiscal years beginning on or after October 1, 1994. The current review system would apply to State programs for fiscal years before fiscal year 1995.

Section 13227. Reviews of State Conformity With State Plan Requirements

Present law

(a) Title IV–B.–There are no formal review provisions for title IV–B in current law. However, section 427 of title IV–B contains certain protections for foster children which States must comply with to be eligible to receive incentive funds (see item A.4 above). The Department of Health and Human Services (HHS) has developed a review system to determine State compliance with these protections.

States self-certify their compliance with section 427 requirements, and are then reviewed by HHS to determine actual compliance. To verify compliance with section 427, HHS conducts a two-stage review. The first stage is an administrative review to determine whether States have developed policies and procedures necessary to implement section 427 protections for all children in foster care under the responsibility of the State. The second stage is a case record survey to determine if these policies are being implemented throughout the State.

An initial review is conducted for the first year in which the State self-certifies its eligibility. The case record survey in the initial review must confirm that section 427 protections are provided for at least 66 percent of the children in foster care. If a State meets the initial review requirements, a subsequent review is conducted for the following fiscal year, which must find

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that section 427 protections are provided for at least 80 percent of the children. States which meet the subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This triennial review must find section 427 protections are being provided for at least 90 percent of the children in foster care. If a State does not meet the requirements for any year under review, the review is conducted each succeeding fiscal year until eligibility is established for title IV–B incentive funds, or until the State withdraws its self-certification.

****713*481** (b) Title IV–E.–Section 471(a)(13) of title IV–E requires, as a component of State plans under title IV–E, that States arrange for periodic and independent audits of their activities under titles IV–B and IV–E, to be conducted at least once every 3 years. In addition, section 471(b) allows the Secretary of HHS to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions. The Secretary must first provide reasonable notice and opportunity for a hearing.

Explanation of provision

Would bar the Secretary from imposing financial penalties on States for failures of State programs under titles IV–B and IV–E to conform to provisions of the State plan and to applicable State plan requirements under Federal statutes and regulations, except under final regulations published in accordance with this amendment after consultation with the State agencies administering those programs.

The regulations establishing conformity review systems would have to:

(a) specify the review timetable, which would have to require annual reviews in the first 2 years of program operation and within 1 year following any review finding substantial nonconformity; could permit less frequent reviews of State programs found in conformity; but would retain the Secretary's discretion to reinstate a more frequent review schedule based on any information indicating problems with conformity;

(b) specify the plan requirements subject to review, and the criteria for determining the extent of any nonconformity with such requirements and whether there is a substantial failure to conform;

(c) specify the method to be used to determine the amount of penalty to be imposed for failure to conform, under which: (i) no penalty could be imposed unless the nonconformity was substantial, (ii) no penalty could be imposed for a failure resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary, and (iii) the penalty would be related to the extent of nonconformity;

(d) require the Secretary, with respect to any State found to have failed substantially to conform to plan requirements, (i) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to eliminate the nonconformity, (ii) to make technical assistance available to the State to the extent necessary to enable the State to develop and implement the corrective action plan, (iii) to suspend the imposition of any penalty while the corrective action plan is in effect, and (iv) to forgive any penalty if the nonconformity is eliminated by successful completion of the corrective action plan.

The regulations must: (i) require the Secretary to give notice to a State not later than 10 days after the determination of nonconformity, declaring the basis for the determination and the ****714*482** amount of the financial penalty (if any) imposed on the State, (ii) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days of receipt of the notice (or, if later, after failure to continue or to complete a corrective action plan), and (iii) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, upon appeal to the appropriate Federal district court within 60 days after receiving notice of the Board's decision.

The provision could not be construed to prevent the Secretary, in the interim before the effective date of the final regulations, from conducting conformity reviews of State programs for the purpose of providing information and technical assistance to States on corrective actions needed in order to conform to applicable requirements.

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Effective date

Upon enactment.

Section 13228. Repeal of Annual Report on Voluntary Placement

Present law

Under current law, the Secretary is required to report annually to Congress on voluntary placements of children into foster care under title IV–E, including recommendations on the continuation of the authority for voluntary placements. The voluntary placement authority under title IV–E now is permanent.

Explanation of provision

The provision would repeal the requirement for the annual report on voluntary placements.

Effective date

Upon enactment.

Section 13229. Demonstrations

Present law

No similar provision.

Explanation of provision

Would authorize the Secretary to permit up to 10 States to conduct demonstration projects which she finds likely to promote the objectives of titles IV–B or IV–E of the Act. The Secretary could waive State compliance with any requirement of titles IV–B and IV–E, which, if applied, would prevent the State from carrying out the demonstration or from effectively achieving the purpose of the demonstration, except: (i) the foster care child protections of title IV–B, (ii) the requirement for the reporting of data on adoption and foster care, and (iii) any provision of title IV–E which, if waived, would impair the entitlement of any qualified child or family to benefits under title IV–E.

For purposes of Federal payments, expenditures under an approved demonstration would be treated, at State option, as expenditures under title IV–B or under title IV–E.

****715*483** Demonstrations would be limited to 5 years. A State seeking to conduct a demonstration project must submit an application to the Secretary, in the form the Secretary requires, which includes:

(a) a description of the proposed project, the geographic area in which the project would be conducted, the children or families to be served, and the services to be provided (which must provide, where appropriate, for random assignment of children and families to groups served under the demonstration and to control groups);

(b) a statement of the period during which the project would be conducted;

(c) a discussion of the benefits that are expected from the project;

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(d) an estimate of the costs or savings of the project;

(e) a statement of current program requirements for which waivers would be needed to permit conduct of the demonstration;

(f) a description of the proposed evaluation design; and

(g) such additional information as the Secretary may require.

The State must obtain an evaluation by an independent contractor of the effectiveness of the demonstration project, using an evaluation design approved by the Secretary which provides for: (i) comparison of methods of service delivery under the demonstration, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management; (ii) comparison of outcomes for children and families (and groups of children and families) under the demonstration, and such outcomes under the State plan or plans, for purposes of assessing the effectiveness of the demonstration in achieving its goals; and (iii) any other information that the Secretary requires. The State must provide interim and final evaluation reports to the Secretary at such times and in such manner as the Secretary may require.

The Secretary could not authorize a State to conduct a demonstration unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the demonstration over its approved term (or some portion thereof or other period the Secretary may find appropriate) will not exceed the amount of such funds that would be spent under the State programs under part B and E of title IV in the State if the demonstration were not conducted.

Effective date

Upon enactment.

Section 13230. Placement Accountability

Present law

Title IV–E does not require the States to implement any specialized reviews or procedures in the case of children who are placed in foster care institutions outside the State.

Under title IV–E, States are required to provide for the development of a case plan for each child receiving foster care maintenance payments, which must meet certain requirements.

****716*484** Explanation of provision

The case plan for a child placed in a foster family home or child care institution a substantial distance from his home, or in a different State, would have to include a declaration of the reasons why the placement is in the best interests of the child. Also, in the case of a child placed in foster care in a different State, the case plan for the child must require that, at least every 6 months, an agency caseworker of either State visit the child in the foster home or institution, and submit a report on the visit to the State agency of the child's home State. In addition, the dispositional hearing (see item I.A.11.) for a child placed in foster care in a different State must determine whether the out-of-State placement continues to be appropriate and in the best interests of the child.

The statutorily-mandated data collection system relating to adoption and foster care (section 479(b)(2) of title IV–E) must provide information on the number and characteristics of children placed in foster care outside the State.

Effective date

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October 1, 1994.

Section 13231. Payments of State Claims for Foster Care and Adoption Assistance

Present law

No provision. However, Federal regulations provide a timetable for the treatment of State claims for foster care and adoption assistance, and other programs.

Explanation of provision

The provision would codify the regulations. Title IV–E would provide that upon receipt of a State claim for expenditures, the Secretary must within 60 days allow, disallow, or defer the claim. Within 15 days after a decision to defer a claim, the Secretary must notify the State of the reasons for the deferral action and of the additional information which the Secretary believes is necessary to determine the allowability of the claim. Within 90 days after receiving all information (in readily reviewable form) necessary to determine the allowability of the claim, the Secretary must either: (1) disallow the claim, if able to complete the review and make a determination that the claim is not allowable, or (2) in any other case, allow the claim (subject, as necessary, to later disallowance upon completion of the review, and subject, in any case, to later disallowance on the basis of findings of an audit or financial management review).

Effective date

Date of enactment.

Section 13232. Moratorium on Collections

Present law

No provision.

****717*485** Explanation of provision

The provision would prohibit the Secretary, until October 1, 1994, from: reducing any payment to, withholding any payments from, or seeking any payments from any State, under titles IV–B or IV–E, by reason of a determination made in connection with a review of State compliance with the title IV–B foster care protections; and reducing any payments to, withholding any payments from, or seeking any payments from any State, under title IV–E, by reason of a determination made in connection with a Federal title IV–E financial review or an audit conducted by the Inspector General.

Effective date

Date of enactment.

Section 13233. Border Region Child Welfare Services Training Demonstration

Present law

No provision.

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Explanation of provision

The bill authorizes training demonstrations in States along the United States-Mexico border (Texas, New Mexico, Arizona and California) for the delivery of culturally sensitive and bilingual child welfare services to residents of the border region of the States. Under the demonstration, the Secretary would make grants to up to 5 institutions of higher learning to train individuals to deliver the culturally sensitive and bilingual child welfare services. One of these demonstration programs must provide training to deliver services to historically unserved or underserved populations in an urban center with a high concentration of such populations.

The term historically unserved or underserved populations includes: (1) socially and economically disadvantaged populations; (2) persons with limited English proficiency; (3) urban populations exhibiting a high incidence of child neglect, abuse or abandonment; (4) homeless persons; (5) persons who are, or are in danger of becoming, infected with human immunodeficiency virus; and (6) alcohol and drug abusers.

In order to receive approval by the Secretary, an application would have to demonstrate that the institution of higher learning has a history of, or plan for, training students to deliver culturally-sensitive and bilingual child welfare services in an area of the United States that borders on Mexico.

The institution would also have to provide assurances that it will develop and implement, in consultation with the child welfare agency of the State in which the applicant is located, a curriculum in the field of child welfare services that is sensitive to the culture of the areas of the United States that border on Mexico (or, for the urban center demonstration, the historically unserved or underserved populations of the urban center) and that includes training for identification of health problems of children and their families and of child abuse and neglect.

****718*486** Each individual who receives a stipend with a traineeship would have to enter into an agreement with the institution of higher learning under which the recipient would have to agree to be employed for a number of years equivalent to the period of the traineeship in a public or private nonprofit family assistance agency that provides services directly to residents of the border county in which the agency is located (or, for the urban center demonstrations, the urban center in which the agency is located). In the event a recipient fails to comply, the recipient would have to repay all or part of the amount of the stipend, plus interest, and if applicable, reasonable collection fees.

Each institution that conducts a demonstration project would have to develop and carry out a plan for evaluating the effects of the training provided under the project, and would have to submit a report on the evaluation.

The border region is defined as those counties that are on the Mexico border and those that are next to a county on the border.

The urban center is defined to mean an area in a metropolitan statistical area, as designated by the Director of the Office of Management and Budget, which has a high incidence of individuals in historically unserved or underserved populations who are in need of social services, as determined by the Secretary using the most recent and best available information.

Effective date

Date of enactment.

Section 13224. Effect of Failure to Carry Out State Plan (Suter v. Artist M.)

Present law

Many of the principal Federal social welfare programs are established under the “State plan” titles of the Social Security Act of 1935, as amended. These programs include Aid to Families with Dependent Children (AFDC) (Title IV–A), Child Welfare Services (Title IV–B), Child Support and Establishment of Paternity (Title IV–D), Foster Care and Adoption Assistance

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(Title IV–E), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The Adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their title IV–E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (Sec. 471(a)(15)).

On March 15, 1992, the U.S. Supreme Court held in Suter v. Artist M., that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 471(a) does place a requirement ****719*487** on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

Explanation of provision

Would amend title XI of the Social Security Act by adding a new section that reads as follows:

> "In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action."

The intent of the provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M., while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause of title IV–E does not provide a basis for a private right of action. The Committee does not believe that Suter v. Artist M. would be applied to the unemployment compensation program.

Effective date

The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

B. CHILD SUPPORT ENFORCEMENT

Section 13241. In-Hospital Paternity Establishment

Present law

The Child Support Enforcement Program was enacted as part of the Social Security Act in 1975. The States operate their own programs within Federal law and regulations. The Federal Government pays for 66 percent of the administrative costs. States are responsible for establishing paternity, locating absent parents, establishing child support orders, and enforcing child support. The Federal role includes monitoring and evaluating State programs, providing technical assistance, and in certain instances, helping States locate absent parents and collect child support payments. The Internal Revenue Service (IRS) collects some child support in arrears by offsetting income tax refunds otherwise due to taxpaying obligors.

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Paternity Establishment Performance Standards.–A State shall be found in compliance with Federal law if its paternity establishment ****720*488** percentage for fiscal years beginning on or after October 1, 1991 is at least: (a) 50 percent; (b) the paternity establishment percentage of the State for fiscal year 1988, increased by 3 percentage points for each year after fiscal year 1989 and ending before the fiscal year for which the standard is to apply; or (c) the paternity establishment percentage determined with respect to all States for the fiscal year.

The term "paternity establishment percentage" for a State for a given fiscal year is the percent obtained by dividing the number of children in the State who are born out of wedlock, are receiving cash benefits or Title IV–D child support enforcement services, and for whom paternity has been established by the number of children who are born out of wedlock and are receiving cash benefits or IV–D child support services.

Explanation of provision

Paternity Establishment Performance Standards.–A new paternity establishment standard would require that a State's paternity establishment percentage be based on the most recent data available which are found by the Secretary to be reliable, and must: (1) be 75 percent; or (2) have increased by 3 percentage points over the previous fiscal year for a State with a percentage between 50 and 75 percent, or by 6 percentage points over the previous fiscal year for a State with a percentage below 50 percent.

Additional Requirements of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement.–The provision would require each State to have in effect laws requiring the use of additional procedures:

(1) for a simple civil process for voluntarily acknowledging paternity under which the rights and responsibilities of acknowledging paternity are explained and due process safeguards are afforded and which must include: (A) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child; and (B) the inclusion of signature lines on applications for official birth certificates which, once signed by the father, and the mother, constitute a voluntary acknowledgment of paternity;

(2) under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity;

(3) under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity;

(4) which provide that any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and if no objection is made the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(5) which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results****721*489** indicating a threshold probability of the alleged father being the father of the child; and

(6) under which State tribunals must enter default orders in paternity cases upon a showing of a service of process and whatever additional showing may be required by State law.

Also States would be required to have expedited processes for paternity establishment in contested cases and to require that a State give full faith and credit to determinations of paternity made by other States. The State plan requirements are further amended by requiring States to have in effect procedures under which, in the administration of any law involving the issuance, reissuance, or amendment of a birth certificate, the State must require each parent to furnish his social security number (SSN) to assist in identifying the parents of the child. The SSN could not appear on the birth certificate, and the use of the SSN is restricted to child support purposes.

Effective date

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The provision would be effective on: (1) October 1, 1993, or (2) if later, upon enactment by the State legislature of all laws required by the provision, but in no event later than the first calendar quarter beginning after the close of the first regular session of the State legislature after enactment of this bill.

Section 13242. Enforcement of Health Insurance Support

Present law

Public Law 98–378, the Child Support Enforcement Amendments of 1984, required the Secretary of Health and Human Services to issue regulations to require State agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. The regulations were required to provide for improved information exchange between State child support enforcement agencies and the medicaid agencies with respect to the availability of health insurance coverage.

Explanation of provision

The provision would amend the Social Security Act to require health insurers:

(1) to disregard an individual's eligibility for Medicaid benefits in determining eligibility for and coverage under the insurer's policy;

(2) to treat all State Medicaid programs as subrogated to Medicaid recipients' rights under health insurance policies; and to treat State Medicaid agencies (when acting as agents or subrogees of applicants or beneficiaries) no differently from any other applicant, beneficiary, agent, or subrogee;

(3) not to bar coverage of a child under a parent's health insurance on grounds that the child does not reside with the parent or was born out of wedlock;

(4) where a parent is required by court or administrative order to provide health insurance coverage for a child, require insurers, at any time, (A) to permit that parent to enroll in ****722*490** family coverage and to enroll the child, and (B) if that parent fails to apply, to enroll the child under that parent's family coverage upon application by the child's other parent or by the State Medicaid or child support enforcement agency; and

(5) to process and pay claims for medical care of such child submitted by the custodial parent, the service provider, or the State Medicaid agency.

State laws would be required to require employers to: (1) upon notice of a court or administrative order for such coverage, and upon application by the employee, the other parent, or the State Medicaid or child support enforcement agency, to permit enrollment at any time, under employer-sponsored group health coverage, of any employee's child who is the subject of such an order; (2) to permit disenrollment only upon proof that the order is no longer in effect or that alternative insurance coverage will be substituted; and (3) to withhold any employee share of premiums from the employee's pay.

State laws would be required to require the State Medicaid agency to garnish employment income of, and to withhold amounts from State tax refunds to, any person who: (1) is required by court or administrative order to provide coverage of the costs of medical services to a Medicaid-eligible individual; (2) has received third-party payment for such costs; and (3) has not used such payments to reimburse, as appropriate, either the individual or the provider for such costs. Such garnishment or withholding would be permitted to the extent necessary to reimburse the Medicaid agency for expenditures for such costs, but claims for child support would take priority over claims for such medical costs.

Effective date

Calendar quarters beginning on or after April 1, 1994, except in the case of a State that the Secretary determines requires

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State legislation in order for the program to need the additional requirements imposed by these provisions. The exception would expire the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. In the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Section 13243. Reports to Credit Bureaus on Persons Delinquent in Child Support Payments

Present law

The Child Support Enforcement Amendments of 1984 required State child support enforcement agencies to provide information regarding the amount of overdue support owed by an obligor residing in the State to any consumer reporting agency, as defined under the Fair Credit Reporting Act, upon the request of that agency, if the arrearage exceeds $1,000. If the amount of overdue support is less than $1,000, the State may choose whether or not to report the delinquency.

The information may not be made available to the consumer reporting agency until notice of the proposed action has been sent to ****723*491** the obligor, the obligor has been given a reasonable opportunity to contest the accuracy of the information and all procedural due process requirements of the State have been fulfilled. Also, a fee, not to exceed the cost of furnishing the information, may be imposed on the requesting agency by the State.

The Ted Weiss Child Support Enforcement Act of 1992 amended the Fair Credit Reporting Act to require consumer reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by State or local child support enforcement agencies which predates the report by 7 years.

Explanation of provision

Would require State child support enforcement agencies to periodically report the names of obligors who are at least 2 months delinquent in the payment of support and the amount of the delinquency to consumer reporting agencies. The present law requirement that the amount of the delinquency must exceed $1,000, and the requirement for notice and due process, would be retained. The provision relating to payment of a fee by the credit reporting agencies would be repealed.

Information could not be made available to a consumer reporting agency if: (1) the State determined that the consumer reporting agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it conforms to the definition of a “consumer reporting agency” under Federal law.

Effective date

October 1, 1994, except if the Secretary determines that a State is unable to comply with the provision. Such State would be exempt from compliance until the State establishes an automated data processing and information retrieval system or October 1, 1995, whichever occurs earlier.

C. SUPPLEMENTAL SECURITY INCOME

Section 13251. Fee for Administration of State Supplementation of Supplemental Security Income (SSI)

Present law

The Social Security Administration administers the State supplementation of Supplemental Security Income (SSI) benefits in 27 States and the District of Columbia. No fee is charged for this service.

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States have the option to supplement the Federal SSI benefit standard. All but nine States and jurisdictions provide State supplementation. Those that do not are: Arkansas, Georgia, Kansas, Mississippi, North Dakota, Northern Mariana Islands, Tennessee, Texas, and West Virginia. States may elect to administer their supplementary payments themselves or may contract with the Social Security Administration for Federal administration. Since the SSI program began in 1974, six States have shifted from Federal to State administration of their optional State supplementation program.

****724*492** Explanation of provision

The Social Security Administration would be required to charge States fees for the Federal cost of administering State supplemental SSI payments. The fee would be: (1) $1.67 for each monthly supplementary payment for fiscal year 1994; (2) $3.33 for each monthly supplementary payment for fiscal year 1995; and (3) $5.00 for each monthly supplementary payment for fiscal year 1996. The fee for subsequent fiscal years would be $5.00 or such amount as the Secretary determines.

Further, the Secretary would be required to charge fees for additional services requested by States that are beyond the level customarily provided for administration of the State's supplementary payment program.

Effective date

The provision would be effective for supplementary payments made in months beginning after September 1993.

Section 13252. Exclusion of State Relocation Assistance from Countable Income under the SSI Program

Present law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 excludes from income and resources any relocation assistance provided under the Act to individuals receiving Federal assistance, including SSI. Relocation assistance is paid when individuals are required to move by the Government. For example, the Government might need their land for a public building or highway or they might need to move because toxic wastes were discovered on the site. Under Public Law 101–508, comparable State or local relocation assistance was excluded from countable income under SSI and also from resources for no more than 9 months for 3 years ending May 1, 1994.

Explanation of provision

The provision would make permanent the exclusion of State and local relocation assistance from countable income under the SSI Program.

Effective date

Date of enactment.

Section 13253. Prevention of Adverse Effects on Eligibility for, and Amount of, SSI Benefits When Spouse or Parent of Beneficiary Is Absent From the Household Due to Active Military Service

Present law

If the parent or spouse of family members who receive Supplemental Security Income (SSI) payments resides in the household and then is required to be absent from the household because of an active military duty assignment, this absence can cause the family members to lose benefits or eligibility for SSI. This is because absence from the household causes more of the income of the ****725*493** absent member to be attributed to those receiving SSI in the household. Also, if the military

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duty assignment involves armed conflict, the service member may receive hazardous duty pay. This additional income, if sent back to the household, can also reduce the SSI payments or cause ineligibility of family members.

Explanation of provision

Would require that a spouse or parent who is absent from an SSI household solely because of a military assignment is deemed to be still living in the household. Would exclude certain hazardous duty pay from countable income under the SSI program.

Effective date

The first day of the second month that begins after the date of enactment.

Section 13254. Eligibility for Children of Armed Forces Personnel Residing Outside the United States Other Than in Foreign Countries

Present law

SSI benefits are generally continued for children who are U.S. citizens and who accompany their parents on U.S. military assignments to foreign countries. Benefits do not continue if the parents are stationed in Puerto Rico or in the territories or possessions of the United States.

Explanation of provision

Would continue SSI benefits to children who are U.S. citizens if they received SSI benefits in the United States and then accompany their parents on U.S. military assignment to Puerto Rico or territories or possessions of the United States.

Effective date

October 1, 1993.

Section 13255. Definition of Disability for Children Under Age 18 Applied to All Individuals Under Age 18

Present law

Present law provides a definition of disability applicable to children. The SSI program defines a child as someone who is neither married nor the head of a household, and who is: (1) under age 18, or (2) under age 22 and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful work.

Explanation of provision

Would extend the SSI childhood definition of disability to any person under age 18.

Effective date

Date of enactment

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****726*494** Section 13256. Valuation of Certain In-kind Support and Maintenance When There Is a Cost of Living Adjustment in SSI Benefits

Present law

A person who lives in the household of another person and receives in-kind support and maintenance from the householder must have his or her Federal SSI benefit reduced by one-third of the Federal benefit. Regulations provide for a "presumed maximum value" for measuring in-kind support and maintenance for a person who lives in his or her own household and receives in-kind support and maintenance, or lives in another person's household and receives food or shelter, but not both. This "presumed maximum value" is one-third of the Federal SSI benefit plus $20 per month (the amount of the unearned income exclusion from countable income).

Under the 2-month retrospective accounting principle that generally governs SSI benefit calculations, SSI benefits are determined after looking at the income in the second preceding month. In this system, an individual's countable income in the second month before the current month is used to determine the SSI benefit for the current month.

As a result of this use of retrospective accounting, the presumed value of in-kind support is not increased at the time an annual cost-of-living adjustment (COLA) to SSI benefits takes effect. Each time SSI benefits are increased by a COLA, SSI benefits for January and February are calculated using the increased value, but the reduction in benefits for receipt of support and maintenance in-kind is made on the lower pre-COLA November and December Federal SSI benefit. A 2-month lag occurs between the receipt of the COLA and the adjustment for increased value of in-kind support. A beneficiary will receive a COLA in January and February. Then in March, when the post-COLA Federal SSI benefit is used for valuing the reduction for in-kind support and maintenance, SSI benefits will drop.

Explanation of provision

This provision would require that the current month's Federal benefit amount be used in determining the value of in-kind support and maintenance in calculating the current month's Federal benefit to be paid. This would eliminate the unintended benefit increase for January and February following a COLA and the offsetting reduction for March.

Effective date

Months after calendar year 1993.

Section 13257. Exclusion of Certain Income Received by Indians from Interests Held in Trust

Present law

Income received by Indians from tribally-owned trust lands is exempt from consideration under Federal welfare programs, such as AFDC and Supplemental Security Income (SSI). This income is distributed ****727*495** on a per capita basis to tribal members, but the land is owned by the tribe as a whole and managed for the tribe's benefit by the Bureau of Indian Affairs.

Individually-owned trust or restricted Indian lands are excluded from resources in applying the resource test under AFDC and SSI. However, income derived from leases on individually-owned trust or restricted Indian lands and paid to an individual is included in countable income when determining eligibility and benefit amounts for these cash welfare programs.

Explanation of provision

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The provision exempts income up to $2,000 annually paid to an individual derived from leases on individually-owned trust or restricted Indian lands in determining eligibility and benefit levels under the AFDC and SSI programs.

Effective date

January 1, 1993.

D. AID TO FAMILIES WITH DEPENDENT CHILDREN

Section 13261. Limit Federal Funding Match to 50 Percent for State Administrative Costs Under the AFDC Program

Present law

In general, the Federal Government provides 50 percent reimbursement for State administrative expenses under the aid to families with dependent children (AFDC) program. Enhanced Federal reimbursement is available, however, for three categories of expenses:

(a) Expenditures related to the verification of the immigration status of aliens.–Under the Social Security Act, States must require and determine, as a condition of an individual's eligibility, that the individual is either a citizen, or an alien lawfully admitted for permanent residence or otherwise residing permanently in the U.S. under color of law. If an individual is not a citizen, the State must verify the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system. State expenditures for the costs of implementing and operating the system are fully reimbursed by the Federal government.

(b) Expenditures related to information management.–Under the AFDC program, States may establish and operate a statewide management information system, in accordance with an initial and annually updated advance planning document approved by the Secretary. State expenditures relating to the planning, design, development and installation of the system are reimbursed by the Federal government at a rate equal to 90 percent.

(c) Expenditures related to fraud control.–Under the AFDC program, States may establish and operate a fraud control program in accordance with certain statutory guidelines. In general, under the program, certain penalties (in the form of benefit reductions) apply for a specified period in cases where an individual is found to have intentionally committed fraud for the purpose of maintaining his ****728*496** family's eligibility for benefits or securing increases in the amount of aid. State expenditures relating to the costs of carrying out the fraud control program, including costs related to investigation, prosecution, and administrative hearing of fraudulent cases, and collection, are reimbursed by the Federal government at a rate equal to 75 percent.

Explanation of provision

The provision would reduce the Federal matching rates for each of these three categories of expenditures to 50 percent. Hardship waivers will be available in certain cases. In addition, the provision would make the State verification of the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system, optional.

Effective date

The provision would be effective April 1, 1994, except that the Secretary may delay applicability to a qualified State until the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of enactment. The Secretary shall establish what the term "qualified State" means and apply it uniformly, including whether the State legislature meets biennially and does not have a regular session scheduled in calendar year 1994.

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Section 13262. Delay in Effective Date of AFDC–UP Participation Rate Requirements

Present law

In general, the Family Support Act of 1988 included a provision that requires States to require at least one parent in an AFDC–UP family (a family eligible for AFDC due to the unemployment of the principal earner in the family) to participate in any of certain specified work activities at least 16 hours a week, if either parent is not exempt from participation.

The requirement will not be enforced until fiscal year 1994. States will be considered to have met this requirement for a fiscal year if the following average monthly percentages of AFDC–UP families in the State participate in work activities: 40 percent for fiscal year 1994; 50 percent for fiscal year 1995; 60 percent for fiscal year 1996; and 75 percent for fiscal year 1997 and 1998. HHS regulations provide that the Federal matching rate to a State for the JOBS program will be reduced to 50 percent if the State does not satisfy the participation rate requirement for the prior year. (Non-administrative JOBS expenditures are generally matched by the Federal government at the Medicaid rate, with a minimum Federal match of 60 percent).

Explanation of provision

Would delay by 1 year Federal requirements regarding AFDC–UP participation rates. States will be considered to have met the requirement for a fiscal year if the following average monthly percentages of AFDC–UP families in the State participate in work activities: 40 percent for fiscal year 1995; 50 percent for fiscal year ****729*497** 1996; 60 percent for fiscal year 1997; and 75 percent for fiscal years 1998 and 1999.

Effective date

Date of enactment.

Section 13263. Report to Congress on Performance Standards in the JOBS Program

Present law

Section 487 of the Social Security Act requires the Secretary, not later than 3 years after the effective date of the Family Support Act of 1988, to develop performance standards for the Job Opportunities and Basic Skills (JOBS) program and to submit her recommendations for performance standards to appropriate committees of Congress. The recommendations must include recommendations with respect to specific measurements of outcomes, may not be based solely on levels of activity or participation, and must take into account what States reasonably can be expected to achieve.

Explanation of provision

Would delay the required date for recommendations by 1 year. Also, the Secretary would be required to develop criteria for the performance standards, rather than performance standards.

Effective date

Date of enactment.

Section 13264. Measurement and Reporting of the Degree to Which Families Depend on Income From Welfare

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Present law

National and State information on AFDC receipt and the characteristics and financial circumstances of AFDC recipients is compiled annually by the Department of Health and Human Services (DHHS), using data from the National Integrated Quality Control Review System (NIQCS).

Explanation of provision

Would require the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop measures of the degree to which families depend on income from welfare programs, and predictors of welfare receipt. Not later than 2 years after the date of enactment, the Secretaries of HHS and Agriculture would be required to submit an interim report with conclusions to designated committees of Congress.

A temporary Advisory Board on Welfare Participation would be created, composed of 12 Members with equal numbers appointed by the House of Representatives, the Senate and the President. The Board would be composed of experts in the field of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of measures that describe the degree to which families depend on income from welfare programs, and on the development ****730*498** and presentation of the annual report on welfare participation.

Would require the Secretary to prepare an annual report on welfare participation, that provides information on the degree to which families depend on income from welfare programs, and trends in participation, and provides information on the reasons that families depend on income from welfare programs. The first report would be due no later than 3 years after the date of enactment.

Effective date

Date of enactment.

Section 13265. New Hope Demonstration Project

Present law

No provision.

Explanation of provision

Would allow the Secretary to provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin. A qualified program is defined as a program operated by the New Hope Project, Inc., a private not-for-profit corporation in Milwaukee, which offers low-income residents employment, wage supplements, child care, health care, and counseling and training for job retention or advancement.

Would require the Secretary to make payments for no more than 20 quarters, in an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program, in the absence of the program, for cash assistance and child care under Title IV–A, and for administrative expenses for these programs. Expenses of the program relating to evaluation would qualify for 50 percent Federal matching.

The operator of the program must provide in the application that the following conditions will be met: (1) the operator will implement an evaluation plan designed to provide reliable information on the impact and implementation of the program, that will include adequately sized groups of participants and control groups assigned at random; (2) the operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of

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payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting specified requirements; (3) the operator will specify a methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount; and (4) the operator will issue an interim and final report on the results of the evaluation of the program at such times as required by the Secretary.

Effective date

The provision would take effect on the first day of the first calendar quarter that begins after the date of enactment.

****731*499** Section 13266. Delay in AFDC–UP Mandate for Outlying Jurisdictions

Present law

The Family Support Act of 1988 included a requirement that any State AFDC plan make AFDC available to needy dependent children of unemployed parents (for at least 6 out of 12 months). The amendment was effective for the States on October 1, 1990, and for Puerto Rico, Guam, the Virgin Islands and American Samoa on October 1, 1992. (American Samoa, however, does not participate in the AFDC program.) Unlike States, these outlying areas are subject to limitations on payments for AFDC and related programs.

Explanation of provision

This provision would delay the requirement for implementation of the Unemployed Parent program in Puerto Rico, Guam, the Virgin Islands, and American Samoa until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed.

Effective date

Date of enactment.

Section 13267. Declaration of Citizen and Alien Status

Present law

Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, Medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national of the U.S., and if not, that the individual is in a satisfactory immigration status. Under AFDC policy, a newborn child may not be eligible until a declaration has been signed.

Legislation enacted in 1990 overrode the provision of sec. 1137 with respect to the food stamp program. Under that legislation, one adult member of the food stamp household is required to sign, under penalty of perjury, a written declaration as to the citizenship or satisfactory immigration status of all household members, and by regulation, a declaration for newborn children is allowed no later than the next redetermination of eligibility.

Explanation of provision

With respect to the AFDC program, this provision would allow one adult member of a family or household to sign a declaration, under penalty of perjury, on behalf of other adults in the household. In addition, in the case of a newborn child, it

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would permit an adult to sign a declaration on behalf of the child no later than the date of the next redetermination of the eligibility of the family or household.

****732*500** Effective date

The provision would become effective with respect to benefits provided on or after October 1, 1993.

Section 13268. Increase in Disregard of Stepparent Income

Present law

Effective in July 1963, Federal law required the AFDC agency to disregard "reasonable" work expenses when counting the earned income of AFDC applicants and recipients. The 1981 Omnibus Budget Reconciliation Act (Public Law 97–35) replaced the reasonable work expense deduction with a standard work expense disregard of $75 monthly. In 1981, Congress required that a portion of the income of the stepparent of an AFDC applicant or recipient, even in States that did not hold all stepparents to be financially responsible for stepchildren, must be deemed available to the stepchild; and it then extended the $75 disregard to stepparent earnings. In 1988, effective October 1, 1989, the standard work expense disregard was increased from $75 to $90 per month for AFDC applicants and recipients, but not for stepparents living with AFDC-eligible children.

Explanation of provision

This provision would increase the earnings disregard for stepparents to $90 monthly. This amount of earnings would not be counted in determining the eligibility and benefit amounts of AFDC applicants and recipients.

Effective date

October 1, 1993.

Section 13269. Extension of New York State Child Assistance Program

Present law

New York State currently operates a Child Assistance Program (CAP) demonstration under Federal waiver authority enacted under the Omnibus Budget Reconciliation Act of 1987. The demonstration is testing an alternative to AFDC for families with child support orders and monthly earnings. The project is authorized through March 31, 1994.

Explanation of provision

The provision would extend the CAP demonstration project to April 1, 1999.

Effective date

Date of enactment.

Section 13270. Early Childhood Development Projects

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Present law

The Family Support Act of 1988 authorized up to 10 demonstration projects to test and evaluate the effect of early childhood development programs on families receiving AFDC and participating in ****733*501** Job Opportunities and Basic Skills Training (JOBS), and authorized $6 million for each of fiscal years 1990, 1991, and 1992 for these and two other categories of projects. No funds were appropriated for the early childhood development projects for fiscal years 1990 through 1992.

Explanation of provision

Would extend the authorization for early childhood development projects through fiscal year 1998. It authorizes to be appropriated for these projects up to $3 million for each of fiscal years 1994 through 1998.

Effective date

Date of enactment.

E. UNEMPLOYMENT INSURANCE

Section 13271. Short Time Compensation

Present law

All funds withdrawn from the unemployment trust fund of a State must be used solely in payment of unemployment compensation, exclusive of administrative expenses and refunds of erroneously paid sums except: (1) certain authorized disability payments; (2) certain "Reed Act" expenses; (3) authorized health insurance costs; (4) repayments of overpayments; and (5) short-time compensation.

Short-time compensation is a plan under which an employer, faced with the need for layoffs because of reduced workload, might spread the hours of work required to produce a given product, avoiding layoffs by reducing the number of regularly scheduled hours of work for all employees in an establishment or work unit. Unemployment benefits are payable to workers for hours of work lost as a fraction of the weekly benefit amount. For example, workers laid off for 1 day per week would receive one-fifth of their weekly benefit amounts. Duration is often limited. For example, California and New York limit duration to 20 weeks.

States with short-time compensation programs are: Arizona, Arkansas, California, Florida, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Missouri, New York, Oregon, Rhode Island, Texas, Vermont, and Washington. Connecticut authorized a pilot program, but had not issued regulations on it as of the beginning of 1993.

Public Law 102–318, the Unemployment Compensation Amendments of 1992, explicitly authorized the use of unemployment trust funds for payment of short-time compensation. Although this law defined short-time compensation, it did not define short-time compensation in the Federal Unemployment Tax Act for the purposes of approving State laws and withdrawing funds from the unemployment trust fund to pay short-time compensation. The Solicitor of the U.S. Department of Labor has concluded that this puts States with short-time compensation programs at risk of being out of compliance with Federal law because existing State laws might not comply with the vague language in the Federal Unemployment Tax Act now.

****734*502** Explanation of provision

The provision would amend the Federal Unemployment Tax Act to define explicitly a short-time compensation program. This will ensure that all existing State short-time compensation programs comply with the Federal Unemployment Tax Act.

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Effective date

Date of enactment.

Section 13272. Unemployment Trust Fund Transfers

Present law

Title IX of the Social Security Act allocates Federal unemployment tax revenue into three accounts of the unemployment trust fund: (1) the Employment Security Administration Account (ESAA); (2) the Extended Unemployment Compensation Account (EUCA); and (3) the Federal Unemployment Account (FUA).

Explanation of provision

The provision would strike language that was inadvertently included in the Emergency Unemployment Compensation Act, as amended. The language would have allocated funding that was not adopted in conference committee and therefore, is not needed.

Effective date

Date of enactment.

Section 13273. Advisory Council on Unemployment Compensation

Present law

The Emergency Unemployment Compensation Act of 1991 authorized a quadrennial advisory council on unemployment compensation to examine the purpose, goals, and functioning of the unemployment compensation system, and to make recommendations for improvement. Its first report is due not later than February 1, 1994.

Explanation of provision

The provision would delay the Council's report for 1 year to February 1, 1995.

Effective date

Date of enactment.

Section 13274. Emergency Unemployment Compensation

Present law

Under the Emergency Unemployment Act, as amended by the Unemployment Compensation Amendments of 1992, Public Law 102–318 (H.R. 5260), the Emergency Unemployment Compensation was intended to phase down when the national unemployment rate for 2 consecutive months fell below 7 percent. This provision, adopted from the Senate bill, intended for

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the number of weeks of benefits available to drop from the current 20 or 26 weeks to 10 ****735** or ***503** 15 weeks if the national unemployment rate were below 7 percent for 2 consecutive months. Further, if the national unemployment rate fell below 6.8 percent for 2 consecutive months, it was intended that the number of weeks of benefits available would fall to 7 or 13 weeks.

The Senate language adopted by the conferees to H.R. 5260 referred to the "average rate of total unemployment for all States" instead of what was intended, the "national unemployment rate" in 2 consecutive months.

Explanation of provision

The provision would amend the phase-down trigger language to reflect the intent of the conferees on H.R. 5260 so that the program would phase down as the national unemployment rate falls during 2 consecutive months.

Effective date

Effective as if included in the amendments made by section 101 (b) of the Unemployment Compensation Amendments of 1992.

Section 13275. Increase in Amount of Federal Reimbursement for Extended Benefits

Present law

The Federal matching rate under the Extended Benefits program is 50 percent.

Explanation of provision

The provision would increase the Federal matching rate to 75 percent.

Effective date

Weeks beginning after October 2, 1993. In the case of any State legislature which has not been in session for at least 30 calendar days between the date of enactment and October 1, 1993, the provision would not be a State law requirement before 30 calendar days after the first day on which its legislature is in session on or after October 1, 1993.

Section 13275. Repeal of Special Eligibility Requirements for Extended Benefits

Present law

Public Law 102–318, the Unemployment Compensation Amendments of 1992, suspended certain Extended Benefits (EB) suitable work, job search, and reemployment requirements until January 1, 1995. During the suspension, States may apply the same requirements they use in the regular program.

In general, States require regular program claimants to be able to work, to be available for work, and to seek suitable work actively. State administrators have flexibility in administering these requirements, however, to take into account special circumstances. For example, a claimant in a rural community with only one large employer is not likely to be required to reapply for a job with that employer every week.

****736*504** Under the suspended requirements of the Extended Benefits program (EB), benefits may not be paid to an individual in any week of unemployment if: (a) he fails to accept an offer of "suitable work" or he fails to apply for suitable

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work to which he was referred by the State agency; or (b) he fails to actively seek work, unless: (1) he was issued a summons to appear for jury duty before any court of the United States or any State, or (2) he was hospitalized for treatment of any emergency or a life-threatening condition if such exemptions apply to claimants of regular State benefits and the State chooses to apply them to claimants of EB.

If a claimant is ineligible because of either (a) or (b) above, the claimant is disqualified for the week following the week in which the violation occurred and for each subsequent week until he has been employed for at least 4 weeks and earned at least 4 times his weekly benefit amount.

The term "suitable work" means any work within the claimant's capabilities, except that if the individual furnishes evidence that his prospects for obtaining work in his customary occupation within a reasonable short time period are good, the definition of "suitable work" conforms to State law.

EB may not be denied to a claimant for a failure to apply for or accept a suitable job if: (a) the gross pay does not exceed the claimant's weekly benefit amount plus any supplemental benefits payable to him; (b) the position was not offered in writing and was not listed with the State employment service; (c) such failure would not result in a denial of regular State benefits as long as other conditions of the EB program are met; or (d) the job pays wages less than the higher of; (1) the Federal minimum wage, or (2) the applicable State or local minimum wage.

The claimant is treated as actively seeking work if: (a) he has engaged in a systematic and sustained effort to obtain work; and (b) he provides tangible evidence to the State agency that he has engaged in such effort.

The State must provide for referring applicants for EB to any suitable work to which these provisions apply.

No provision of State law which terminates a disqualification of a claimant for regular State benefits because of voluntarily leaving a job, being discharged for misconduct, or refusing suitable work applies to the EB program unless such termination is based on subsequent employment.

Explanation of provision

The provision would repeal the currently suspended eligibility requirements.

Effective date

Weeks beginning on or after October 2, 1993. In the case of any State legislature which has not been in session for at least 30 calendar days between the date of enactment and October 1, 1993, the provision would not be a State law requirement before 30 calendar days after the first day on which its legislature is in session on or after October 1, 1993.

****737*505** Section 13276. Two-Year Extension of Federal Unemployment Surtax

Present law

The Federal unemployment tax of 0.8 percent is paid by employers on the first $7,000 paid annually to each employee. Of the 0.8 percent tax rate, 0.6 percentage point is permanent and 0.2 percentage point is scheduled to expire at the end of 1996.

Explanation of provision

The 0.2 percent surtax would be extended for 2 years through 1998.

Effective date

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Date of enactment.

Section 13277. Disclosure of Information to Railroad Retirement Board

Present law

The Railroad Retirement Board (RRB) has access to returns and return information regarding taxes imposed under the Railroad Retirement Tax Act for purposes of the administration of the Railroad Retirement Act (RRA), but it is not authorized to receive returns and return information filed under the Railroad Repayment Tax provisions. (The Railroad Unemployment Repayment Tax was imposed to repay loans from the Railroad Retirement Account obtained by the Railroad Unemployment Insurance Account.) In addition, there is no specific authority to disclose RRA information for purposes of the administration of the Railroad Unemployment Insurance Act (RUIA).

Explanation of provision

The provision would amend the Internal Revenue Code to enable the RRB to obtain Railroad Unemployment Tax information.

Effective date

Date of enactment.

F. TECHNICAL PROVISIONS

Section 13281. Corrections Related to the Income Security and Human Resource Provisions of the Omnibus Budget Reconciliation Act of 1990

Explanation of provisions

Would correct references and punctuation in various SSI and AFDC provisions, eliminate conflicting provisions concerning the reporting date of the National Commission on Children, and correct and simplify language concerning special sequestration rules for JOBS funds.

****738*506** Section 13282. Corrections Related to the Human Resource and Income Security Provisions of the Omnibus Budget Reconciliation Act of 1989

Explanation of provisions

Would correct a word and spacing in AFDC quality control and adoption assistance legislative language, and a reference concerning foster care and adoption assistance.

Section 13283. Elimination of Obsolete Provisions Relating to Treatment of the Earned Income Tax Credit

Explanation of provision

Would eliminate provisions in SSI law about treatment of EITC made obsolete by OBRA 1990, which specifies that SSI (and

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AFDC, Medicaid, and food stamps) are to disregard EITC as income.

Section 13284. Redesignation of Certain Provisions

Explanation of provision

Would redesignate two subparagraphs of the Social Security Act concerning when face-to-face interviews at field offices must be granted.

SUBTITLE C–MEDICARE

Chapter 1. Amendments Relating to Part A

SUBCHAPTER A–ELIMINATING THE INFLATION UPDATES FOR SERVICES PROVIDED UNDER MEDICARE PART A

Section 13401. Inpatient hospital services and hospice care

Present law

(a) Inpatient Hospital Service–Standardized amounts used to determine payments under the prospective payment system are updated each year by the use of an "update factor". For fiscal years 1994 and 1995, the update factor for hospitals located in urban areas is set to equal the percentage increase in the hospital market basket. The fiscal year 1994 update factor for rural hospitals is set to equal the increase in the hospital market basket plus 1.5 percentage points. For fiscal year 1995, the update factor for rural hospitals is set to equal the market basket increase plus the amount needed to equalize the standardized amount for rural hospitals to the standardized amount for hospitals in urban areas other than those with more than 1 million people.

(b) PPS-exempt Hospitals–Hospitals exempt from the prospective payment system are reimbursed on a reasonable cost basis, subject to per-case cost limits known as target amounts. For cost reporting periods beginning during fiscal years 1994 and 1995, the target amounts for PPS-exempt hospitals are increased by the projected increase in the hospital market basket.

(c) Hospice–Payment rates for hospice services are updated each year by the projected increase in the hospital market basket.

****739*507** Explanation of provision

(a) Prospective Payment System–For fiscal years 1994 and 1995 the market basket used in updating the prospective payment system standardized amounts would be deemed to equal zero. The additional amounts provided under current law to eliminate the differential between the rural and "other urban" standardized amounts by fiscal year 1995 would continue to apply.

The Committee notes that in the Final Rule setting forth changes to the hospital inpatient prospective payment system for fiscal year 1993, published on September 1, 1992, the Health Care Financing Administration indicated its intention to undertake, by the Spring of 1993, a systematic evaluation of issues involving the treatment of obligated capital under the transition rules applied to capital payments under the prospective payment system. The Committee expects that such evaluation will be completed as indicated, and that appropriate changes in payment policy will be made to address the problems of hospitals subject to a lengthy Certificate-of-Need review process or subject to other circumstances which are not fully addressed under the current transition rules.

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(b) PPS-exempt Hospitals–For cost reporting periods beginning in fiscal years 1994 and 1995, the market basket used in updating the target amounts for PPS-exempt hospitals would be deemed to equal zero.

(c) Hospice–The hospital market basket used to update payment rates for hospice services for fiscal years 1994 and 1995 would be deemed to equal zero.

Effective date

Effective upon the date of enactment.

Section 13402. Skilled Nursing facility services

Present law

Payments for skilled nursing facility services are made on a reasonable cost basis, subject to per-diem cost limits. The limits must be updated for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter.

Explanation of provision

The Secretary would be prohibited from applying an update factor to the cost limits for skilled nursing facility cost reporting periods beginning in fiscal years 1994 and 1995.

Effective date

Effective upon the date of enactment.

SUBCHAPTER B–OTHER PROVISIONS RELATING TO PART A

Section 13411. Hospital Wage Index Provisions

Present law

A change in classification of hospitals from one wage area to another may not result in the reduction in the wage index for a county to an amount below the level of the rural wage index for a State. No similar protection applies in the case of an urban area with a ****740*508** wage index already below the rural wage index for a State, or in the case of an urban area located in a State without any rural areas. Certain hospitals in rural counties adjacent to one or more urban areas are treated as part of an urban area if they otherwise meet certain requirements with respect to commuting standards used in designating Metropolitan Statistical Areas or New England County Metropolitan Areas as published in the Federal Register on January 1, 1980.

Explanation of provision

A change in classification of hospitals from one area to another could not result in a reduction in the wage index for an urban area if the area has a wage index below the rural wage index for the State. A change in classification of hospitals could not result in a reduction in the wage index for an urban area if the area is the only urban area in a State with no rural areas. The January 1, 1980, requirements with respect to commuting standards would be replaced with the most recently available standards. Any hospital qualifying for treatment as an urban county under the 1980 standards, but not meeting the most recent standards would continue to qualify. The Secretary would be authorized to take occupational mix into account in the development of guidelines for reclassification to the extent the Secretary determines is appropriate.

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The Committee notes that in its March 1, 1993 Report and Recommendations to the Congress, the Prospective Payment Assessment Commission recommended a substantial revision to the labor market areas used in computing the hospital wage index under the prospective payment system for inpatient hospital services. The Committee expects the Secretary to expedite the appropriate review and analysis so that this proposal may be properly evaluated and considered for implementation as soon as possible.

Effective date

Effective on the date of enactment, except that the provision relating to urban areas with a wage index below the rural wage index for the State would be effective on October 1, 1991, the provision relating to commuting standards would be effective on October 1, 1993, and the provision relating to occupational mix would be effective as if included in the Omnibus Reconciliation Act of 1989 (OBRA 89).

Section 13412 Hospital Outlier Payments

Present law

The Secretary of Health and Human Services (the Secretary) is required to make additional payment for outlier cases, which are defined as those cases involving long stays or extraordinary costs as compared to other cases in the same DRG. In the final rule for fiscal year 1993 payments under the prospective payment system, the Secretary established a new method for computing outlier payments which reduced payments for outlier cases with long lengths of stay, known as day outliers.

****741*509** Explanation of provision

The Secretary would be required to phase out payments for day outlier cases beginning in fiscal year 1995 and ending in fiscal year 1998. The proportion of outlier payments calculated using the day outlier methodology in fiscal year 1994 would be reduced by 25 percent for fiscal year 1995, 50 percent for fiscal year 1996, 75 percent for fiscal year 1997, and eliminated beginning in fiscal year 1998.

Effective date

Effective upon the date of enactment.

Section 13413. Essential Access Community Hospital Amendments

Present law

(a) OBRA 89 established the Essential Access Community Hospital demonstration program. Under this program, up to 7 States may be designated by the Secretary to receive grants to develop rural health networks consisting of essential access community hospitals and rural primary care hospitals. Individual hospitals may be designated as essential access community hospitals (EACH) and rural primary care hospitals (RPCH). Authorization of appropriations for fiscal years 1990, 1991, and 1992 is $10 million a year for grants to States and $15 million a year for grants to hospitals. In order to receive designation by a State as a rural primary care hospital, a facility must meet certain criteria, including a requirement that inpatient stays not exceed 72 hours.

(b) The Secretary of Health and Human Services is required to make grants to up to seven States to participate in the EACH program.

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(c) The Secretary may designate an urban hospital as an essential access community hospital if it meets the criteria for designation as a rural referral center.

(d) The Secretary may designate a hospital as an essential access community hospital if it is located in a State receiving an EACH program grant.

(e) Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

(f) A rural primary care hospital may not provide more than 6 inpatient beds, meeting such conditions as the Secretary may establish. RPCHs are authorized to maintain "swing beds" as skilled nursing beds or to operate a distinct-part skilled nursing facility.

(g) Medicare inpatient hospital benefits are subject to the inpatient hospital deductible and to coinsurance after 60 days of hospitalization during a spell of illness.

(h) Payments for outpatient services in a rural primary care hospital prior to 1993 are determined either by a cost-based facility fee or an all-inclusive rate, as elected by the RPCH. The Secretary is required to develop and implement by January 1, 1993 a prospective payment system for outpatient services provided in an RPCH.

****742*510** Explanation of provision

(a) Authorization for appropriations would be continued at current levels ($10 million a year for grants to States and $15 million a year for grants to hospitals) through fiscal year 1995. The length of stay requirement for State designation of rural primary care hospitals would be modified to provide that no patient may be admitted unless the attending physician certifies that the patient may reasonably be expected to be discharged or transferred within 72 hours, and that the facility may not provide surgery or other services requiring general anesthesia (other than procedures approved for performance on an ambulatory basis) unless the attending physician certifies that the risk of transfer to another facility for the services outweighs the benefits. The Secretary would be authorized to terminate the designation of a rural primary care hospital whose average length of stay (not counting longer stays during periods of inclement weather or other emergencies) exceeds 72 hours. The General Accounting Office would report to the Congress, within 2 years after enactment, on the application and impact of the changes in length-of-stay requirements.

(b) The number of States eligible for grants under the EACH program would be increased from seven to nine. The Committee anticipates that the Secretary will designate additional States on the basis of applications received in response to the initial solicitation and the evaluation performed by the Department in response to those applications.

(c) The Secretary would be authorized to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation. However, urban hospitals would not be eligible for a change in Medicare payment as a result of the designation.

(d) A State receiving a grant under the EACH program could designate a facility in an adjoining State as an essential access community hospital or a rural primary care hospital if the facility is otherwise eligible for designation. The Secretary would be authorized to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a State receiving an EACH program grant and if the facility is a member of a rural health network of a State receiving a grant.

(e) The requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals would be amended to clarify that the requirements are similar to those for hospitals. Specifically, rural primary care hospitals would be required to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(f) A rural primary care hospital that had a swing-bed agreement at the time of designation would be authorized to provide swing-bed services up to the hospital's licensed acute care bed capacity at the time of conversion, minus the number of

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inpatient beds retained by the rural primary care hospital. The Committee recognizes that the statutory criteria regarding designation of a rural primary care hospital are based on the expectation that the RPCH will have a limited number of inpatient beds, and expects that in cases where the RPCH has a substantially greater number of patients, ****743*511** the Secretary may impose additional standards with respect to staffing or other requirements comparable to those applicable to skilled nursing facilities.

(g) The applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals would be clarified.

(h) The Secretary would be required to implement a prospective payment system for outpatient RPCH services by January 1, 1996. The election of payment alternatives would continue until the Secretary implemented the new system. Payment for outpatient rural primary care hospital services would be made without regard to lesser-of-cost-or-charges limits. Minor drafting errors would be corrected.

Effective date

Effective upon the date of enactment.

Section 13414. Rural Health Transition Grant Program Extension

Present law

OBRA 87 instituted a program of grants to assist rural hospitals with fewer than 100 beds in developing and implementing projects to modify the type and extent of services they provide. Grants may be used to develop health systems with other providers, diversify services, recruit physicians, improve management systems, and provide instruction and consultation via telecommunications to physicians in manpower shortage areas. The program is authorized at $25 million per year for fiscal years 1990, 1991, and 1992.

Explanation of provision

Appropriations for the rural health transition grant program would be authorized at $30 million a year for fiscal years 1993 through 1997.

Effective date

Effective upon the date of enactment.

Section 13415. Regional Referral Center Extension

Present law

Hospitals in rural areas meeting certain criteria may be classified as regional referral centers and receive payment based on the prospective payment system standardized amount for hospitals in “other urban” areas (those with less than 1 million people) rather than the standardized amount for rural areas. OBRA 89 provided that hospitals classified as regional referral centers on September 30, 1989, would retain such status through cost reporting periods beginning before October 1, 1992. Beginning on October 1, 1994, payments to hospitals in rural areas will be based on the same standardized amount as payments to hospitals in “other urban” areas.

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Explanation of provision

All hospitals classified as regional referral centers on September 30, 1992, would retain such status through September 30, 1994. ****744*512** The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as regional referral centers. Hospitals to which this provision applies that lost regional referral center status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would have the opportunity to decline the reclassification and retain referral center status.

Effective date

Effective as if included in OBRA 1989.

Section 13416. Small, Medicare Dependent, Rural Hospital Payment Extension

Present law

OBRA 89 provides for special payment for rural hospitals qualifying as Medicare dependent hospitals (MDHs). In order to qualify for MDH status, a hospital must be located in a rural area, have no more than 100 beds, and have had at least 60 percent of its inpatient days or discharges attributed to Medicare patients during the cost reporting period beginning during fiscal year 1987. MDHs are eligible for payment under the same rules as sole community hospitals for cost reporting periods beginning on or after April 1, 1990 and ending before April 1, 1993. Beginning on October 1, 1994, payments to all hospitals in rural areas will be based on the same standardized amount as payment to hospitals in “other urban” areas (those with less than 1 million people).

Explanation of provision

Special payments for small rural, Medicare dependent hospitals would be continued for discharges occurring through September 30, 1994, on a phase-down basis. For discharges occurring during cost reporting periods beginning on or after April 1, 1990, and before April 1, 1993, existing MDH payments would apply. For discharges occurring during any cost reporting period beginning on or after April 1, 1993, through September 30, 1994, an MDH would receive 50 percent of the difference between their payment under the existing MDH rules and the payment regularly provided under the prospective payment system. The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as Medicare Dependent hospitals. Hospitals that lost MDH status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would be offered the opportunity to decline the reclassification and retain Medicare dependent hospital status.

Effective date

Effective upon the date of enactment.

****745*513** Section 13417. Extension Of Regional Floor

Present law

For discharges occurring beginning on or after April 1, 1988, and ending on September 30, 1993, payments to prospective payment system hospitals in census regions for which the regional standardized amount is higher than the national standardized amount are equal to 85 percent of the regional amount and 15 percent of the national amount.

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Explanation of provision

The regional floor provision would be extended through fiscal year 1996.

Effective date

Effective upon the date of enactment.

Section 13418. Rural Demonstration Extension

Present law

OBRA 90 gave the Secretary authority to waive such provisions of Title XVIII as necessary in order to conduct any demonstration project of limited-service rural hospitals with respect to which the Secretary has entered into an agreement prior to enactment of OBRA 89.

Explanation of provision

The Secretary would be required to continue any such demonstration projects at least through December 31, 1995.

Effective date

Effective upon the date of enactment.

Section 13419. Hemophilia Pass-Through Extension

Present law

The costs of administering blood clotting factor to Medicare beneficiaries with hemophilia who are admitted for hospital stays are not reimbursed as part of the DRG payment, but are separately reimbursed. Additional payments were applied to clotting factor furnished between June 19, 1990, and December 19, 1991.

Explanation of provision

Additional payments for hemophilia clotting factor would be extended for clotting factor furnished through September 30, 1994. The Committee expects that those hospitals affected by this provision will identify to their fiscal intermediary those discharges occurring prior to enactment of this provision for which additional payments for clotting factor would apply.

Effective date

Effective as if included in OBRA 1989.

****746*514** Section 13420. State Hospital Payment Programs

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Present law

Under Section 1814(b) of the Social Security Act, the Secretary may provide that Medicare payments to hospitals in a State be made in accordance with a State hospital reimbursement system meeting certain standards. The State system must meet requirements pertaining to the rate of increase in hospital costs per admission for Medicare beneficiaries occurring under the State system relative to the national average.

Explanation of provision

In the case of a State with a Medicare-approved payment system under section 1814(b), no provision of law would be construed as preventing the system from providing that payment for services covered under the State system be made on the basis of rates provided for under the system. The State program would continue to be required to meet the standards for Medicare-approved payment systems under section 1814.

Effective date

Effective upon the date of enactment.

Section 13421. Psychology Services In Hospitals

Present law

Clinical psychologists are authorized to provide qualified psychologist services to Medicare beneficiaries. In order to participate in Medicare, hospitals must require that all Medicare patients are under the care of a physician, defined to include doctors of medicine, osteopathy, dentists, podiatrists, chiropractors, and optometrists practicing within the scope of State law. Certain States authorize psychologists to supervise the care of inpatients receiving psychologist services.

Explanation of provision

In a State in which such supervision is authorized by State law, the care of hospital inpatients receiving qualified psychologist services could be supervised by a clinical psychologist with respect to such services to the extent permitted by State law.

Effective date

Effective upon the date of enactment.

Section 13422. Graduate Medical Education Payments in Hospital-Owned Community Health Centers

Present law

Additional payments to hospitals for the indirect costs of medical education are based on the ratio of interns and residents at the hospital to the number of beds in the hospital. Interns and residents training in a hospital outpatient department are included for purposes of determining the ratio.

****747*515** Explanation of provision

Services of an intern or resident in a community health center (as defined in the Public Health Service Act) that is wholly owned or controlled by a hospital would be counted for purposes of determining the hospital's intern and resident-to-bed

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ratio if the hospital incurs all or substantially all of the cost of such services.

Effective date

Effective upon the date of enactment.

Section 13423. Treatment of Certain Military Facilities

Present law

Other than Indian Health Service hospitals, hospitals owned by, or under contract to, the Federal government are not eligible for reimbursement under Medicare. Uniformed services treatment facilities are private hospitals under contract to the federal government and are not eligible for reimbursement under Medicare for services provided to individuals eligible for Department of Defense health programs. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a report on joint military/civilian health centers.

Explanation of provision

The Secretary would be prohibited from taking action to recover certain amounts paid by Medicare to uniformed services treatment facilities in Boston, Baltimore, and Seattle for services that were provided between October 1, 1986, and December 31, 1989, to members of the uniformed services or their dependents who were also eligible for Medicare except to the extent that funds are made available for that purpose under the fiscal year 1993 Department of Defense Appropriations Act. The Secretary, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, would be required to conduct a study of the feasibility and desirability of establishing joint medical facilities among the Department of Defense, Department of Veterans Affairs, and other public and private entities and report to Congress by October 1, 1993. The study would include an assessment of the need to make changes in the Medicare and Medicaid programs in order to facilitate the establishment of such joint medical facilities. The Committee is particularly interested in an assessment of the feasibility of developing a joint facility including Highland General Hospital and Oak Knoll Naval Hospital in Oakland, California.

Effective date

Effective upon the date of enactment.

Section 13424. Epilepsy DRG

Present law

The Secretary is required to establish and maintain classifications of inpatient hospital discharges by diagnosis related group (DRG) and a methodology for classifying specific hospital discharges within these groups.

****748*516** Explanation of provision

The Secretary would be required to (1) complete the appropriate analyses of Medicare inpatient claims data for patients with intractable epilepsy admitted to the hospital for a comprehensive medical evaluation including intensive neurodiagnostic monitoring and (2) determine the most appropriate mechanism to account for the resource requirements of these patients beginning with discharges occurring during fiscal year 1995. In carrying out these requirements, the Secretary would be required to consult with the Prospective Payment Assessment Commission and national organizations that represent individuals with epilepsy or those who provide specialized medical services to such individuals.

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Effective date

Effective upon the date of enactment.

Section 13425. Skilled Nursing Facility Wage Index

Present law

Skilled nursing facilities are reimbursed on a reasonable cost basis, subject to per-diem limits. The limits are adjusted to reflect differences in area wages. In applying the wage index adjustment, the Secretary currently uses a wage index based on wage data collected from hospitals. In its March 1, 1992, Report and Recommendations to the Congress, the Prospective Payment Assessment Commission recommended that the Secretary collect data on employee compensation and paid hours of employment for nursing facilities for the purpose of implementing a nursing facility wage index to adjust Medicare skilled nursing facility payments.

Explanation of provision

The Secretary would be required to begin collecting the data necessary to compute a wage index based on wages specific to skilled nursing facilities within 1 year of enactment. The Prospective Payment Assessment Commission would be required to study and report by March 1, 1994 on the impact of applying routine per-diem cost limits on a regional basis.

Effective date

Effective upon the date of enactment.

Section 13426. Hospice Notification to Beneficiaries

Present law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Skilled nursing facilities (SNFs) are required to provide each resident at the time of admission with a written statement of rights. SNFs must also inform each resident of services available and of the related charges for services, including any charges not covered under Medicare or by the facility's basic per diem charge.

Hospitals are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare ****749*517** beneficiaries. Conditions of participation for discharge planning in hospitals require an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

Explanation of provision

Skilled nursing facilities would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare-participating hospice is located in the geographic area of the SNF or it is common medical practice to refer patients to hospices out of the area. SNFs would be required to provide the information to all beneficiaries at the time of admission as part of the oral and written statement of rights.

Hospital conditions of participation with respect to discharge planning would be modified to require an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

Effective date

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The provision would apply to services furnished on or after the first day of the first month beginning more than 1 year after the date of enactment.

Section 13427. Part A Premium

Present law

In general, individuals become entitled to benefits under Medicare Part A when they reach age 65 and are also eligible for monthly Social Security retirement or survivor benefits or railroad retirement benefits. Individuals ages 65 or over who are not entitled to benefits under Part A may enroll in the program if they pay a monthly premium. The monthly premium is based upon the actuarial value of benefits under Part A.

Explanation of provision

The Part A premium would be reduced, on a phased-in basis, for individuals with credits for 30 or more quarters paid into the Social Security system, and the spouses of such individuals. The Part A premium would be reduced by 25 percent in 1994, by 30 percent in 1995, by 35 percent 1996, by 40 percent in 1997 and by 45 percent in 1998 and subsequent years. The reduction in Part A premium payments would also apply to the surviving spouse, or divorced spouse of an individual who had at least 30 quarters of coverage under the Social Security system.

Effective date

Effective for premiums paid on or after January 1, 1994.

Section 13428. Periodic Updates to Salary Equivalency Guidelines for Physical Therapy and Respiratory Therapy Services

Present law

Skilled nursing facilities and other providers may provide physical, respiratory and other therapy services to patients by contracting with independent therapists or companies that employ such ****750*518** therapists. Medicare reimbursement is limited to no more than what Medicare would pay if the therapist was on salary as an employee of the provider. Salary equivalency guidelines, developed by HCFA to determine Medicare reimbursement for physical and rehabilitation therapy provided under such arrangements, are currently based upon 1982 data.

Explanation of provision

The Secretary would be required to recalculate and issue updated salary equivalency guidelines for physical and respiratory therapy services, based upon data appropriate for services provided in nursing homes, using timely and accurate data. The updated guidelines should be issued by no later than December 31, 1993, effective for cost reporting periods beginning on or after July 1, 1993, and every 3 years thereafter.

Effective date

Effective upon date of enactment.

Section 13429. Extension of Application Deadline for Certain Reclassified Hospitals

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Present law

Hospitals may apply to the Medicare Geographic Reclassification Review Board for a change in geographic classification under the prospective payment system. Hospitals requesting a change for payments in a fiscal year must submit an application to the Board not later than the first day of the preceding fiscal year.

Explanation of provision

Hospitals that have been reclassified from urban to rural as a result of revisions to the Metropolitan Statistical Area definitions issued by the Office of Management and Budget on December 28, 1992 may submit applications for reclassification in fiscal year 1994 to the Medicare Geographic Classification Review Board. Applications must be submitted not later than 60 days after enactment.

Effective date

Effective upon the date of enactment.

Section 13430. Clarification of DRG Payment Window Expansion

Present law

Services provided by a hospital (or an entity wholly owned or operated by the hospital) to an inpatient of a hospital during the 3 days prior to admission are not separately reimbursed under part B of Medicare if they are diagnostic services or otherwise related to the admission.

Explanation of provision

The DRG window provision would not apply to hospitals that are not paid on the basis of diagnosis related groups (DRGs). Other minor technical corrections would be made to Part A.

****751*519** Effective date

Effective upon the date of enactment.

Chapter 2. Provisions Relating to Part B

SUBCHAPTER A–ELIMINATION OF INFLATION UPDATE

Section 13431. Eliminating the Inflation Updates for Physician and Related Professional Services

Present law

Under current law, payments for services covered under Part B are generally updated each year by an inflation index.

Prior to 1984, physician fees were updated annually by the Medicare Economic Index (MEI). The MEI measures inflation in the cost of providing physician services. From 1984 through 1991, the MEI update was generally set in reconciliation legislation. The MEI is currently estimated to be 2.7 percent for 1994 and 2.6 percent for 1995.

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Beginning in 1992, Medicare fees for physician services are updated annually by the Medicare Volume Performance Standard (MVPS) system. Under this policy, goals are established prospectively each fiscal year for Medicare expenditures for physician services. Separate goals are set for surgical and non-surgical services.

Following the close of the fiscal year, claims data are reviewed to determine whether surgical and non-surgical expenditures for physician spending was less than or more than their respective targets. If a target is exceeded, the update for services within the category is equal to the MEI reduced by the percentage by which the target is exceeded. If expenditures are less than the established target, the update is the MEI increased by the increased percentage by which expenditures in the category are below the target.

Explanation of provision

The Medicare Economic Index (MEI) would be deemed to be zero for 1994 and 1995. Physician fees still would be adjusted by the percentage by which spending under the Medicare Volume Performance Standard system is above or below the goals established.

Effective date

Applies to services furnished on or after January 1, 1994.

Section 13432. Eliminating the Cost-of-living Adjustments for Certain Items and Services

Present law

Fees for clinical laboratory services, durable medical equipment (DME), orthotics and prosthetics are updated annually by the consumer price index (CPI–U). The CPI–U is currently estimated to be 2.6 percent for 1994 and 2.6 percent for 1995.

Payments and payment limits for certain other services reimbursed on a reasonable charge basis are also subject to an annual update by either the MEI or CPI–U.

****752*520** Explanation of provision

The consumer price index (CPI–U) would be deemed to be zero for the purposes of updating these fees in 1994 and 1995.

Payments for other services subject to either MEI or CPI–U updates would be zero in 1994 and 1995.

Effective date

Applies to services furnished on or after January 1, 1994.

Section 13433. Ambulatory Surgical Centers (ASCs)

Present law

Payments for services in ASCs do not have a statutory annual update. However, the Secretary has generally provided for an update equal to the CPI–U under the Secretary's general authority for determining reasonable costs and charges.

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Explanation of provision

Payments for services in ASCs would not be updated in 1994 and 1995.

Effective date

Applies to services furnished on or after January 1, 1994.

Section 13434. Other Items and Services Under Part B

Present law

Other Part B services are subject to payment screens or payment caps that are used to determine reasonable costs or reasonable charges. These are updated annually according to a variety of different rules.

Explanation of provision

All other payment screens, used to determine reasonable costs or reasonable charges would not be updated in 1994 and 1995. Services affected would include services in Federally Qualified Health Centers, and ambulance services.

Effective date

Applies to services furnished on or after January 1, 1994.

SUBCHAPTER B–PHYSICIAN SERVICES

Section 13441. Reinstating Separate Payment for the Interpretation of Electrocardiograms (EKGs)

Present law

OBRA 90 eliminated separate payments for interpretation of EKGs performed or ordered to be performed as part of, or in conjunction with, a medical visit or consultation, effective January 1, 1992.

Explanation of provision

The OBRA 90 prohibition on separate payments for interpretation of EKGs would be repealed. Separate fee schedule payment ****753*521** amounts for interpreting EKGs in all settings would be established. The proposal provides for several adjustments to the fee schedule in order to comply with budget neutrality rules.

The Secretary would subtract the relative value units for EKG interpretation that were bundled into medical visits and consultation relative values for 1992.

The Secretary would be required to reduce the relative value for all services (except anesthesia services) by the percentage the Secretary determines necessary so that beginning in 1996 expenditures under the fee schedule would not exceed those which would have been made in the absence of this provision. For anesthesia services, the appropriate adjustment is made to the conversion factor. According to the most recent information available, this reduction is estimated to be 0.37 percent; the reduction would apply only to services paid at the full fee schedule.

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HCFA would also make an adjustment to the historical payment basis in the fee schedule to account for the fact that more EKG interpretations would be paid at the full fee schedule amount than medical visits and consultations during the transition. For services in transition to the fee schedule, the estimated reduction is 0.84 percent in 1994, and 0.6 percent in 1995.

The Committee is concerned that restoring separate payment for EKG's will adversely affect the adequacy of payments to emergency physicians. The Committee urges HCFA, when implementing this provision, to reexamine the issue of providing payment to emergency physicians for the interpretation of EKG's provided in emergency rooms.

Effective date

Applies to services furnished on or after January 1, 1994.

Section 13442. Payments for New Physicians and Practitioners

Present law

New physicians and practitioners receive reduced payments during their first 4 years of practice. These reductions were imposed on the first 2 years of practice by OBRA 87 and extended to the third and fourth years of practice in OBRA 90. Payments are 80 percent of the amount otherwise recognized during the first year of practice, 85 percent during the second year, 90 percent during the third year, and 95 percent during the fourth year. These reductions apply to payments under the fee schedule, prevailing charges, or other fee schedule payment amounts.

Explanation of provision

The reductions in payments to new physicians and practitioners would be repealed.

The Secretary would reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) so that Part B expenditures would not exceed the amount of expenditures that would have been made in the absence of this provision. The specified values and amounts are: (i) the relative values for services (except for anesthesia services, where the reduction would be applied ****754*522** to the conversion factor); (ii) the historical payment portion of the 1994 transition payments; and (iii) the prevailing charge or fee schedule amounts to be applied for services of a health care practitioner (as that term was defined before enactment of this Act).

Effective date

Applies to services furnished on or after January 1, 1994.

Section 13443. Retaining Payment for Actual Anesthesia Time

Present law

Anesthesia services are paid on the basis of a fee schedule. One component of the fee schedule is actual time spent administering anesthesia. In the proposed rule implementing the RBRVS physician fee schedule, the Health Care Financing Administration announced its intention to eliminate the use of actual time and substitute average time. The final rule stated that actual time would continue to be used temporarily while other methods of accounting for time in the payment of anesthesia services were being analyzed.

Explanation of provision

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The Secretary could not change the methodology of calculating anesthesia time in the fee schedules for anesthesia services from the methodology that applied as of January 1, 1992.

Effective date

Effective upon the date of enactment.

Section 13444. Geographic Adjustment Refinements

Present law

(a) Use of More Recent Data.–One of the components of the Medicare fee schedule for physicians' services is a geographic cost of practice index (GPCI), which is designed to measure local variations in the costs of practicing medicine. HCFA has previously indicated that they intend to revise the GPCI by 1995. The current index is based in part on 1980 data from the Bureau of Census.

(b) Development of Criteria for Use in Determining Payment Localities.–Geographic adjustments for physician payments are based on geographic localities. In general, the current localities were defined when Medicare was initially established in 1965, and have not been significantly revised since then.

Explanation of provision

(a) Use of More Recent Data.–The Secretary would review and revise the geographic practice cost index by not later than January 1, 1995 using the most recent data on practice expenses, malpractice expenses and physicians' work effort. The Secretary would consult with appropriate representatives of physicians in reviewing geographic adjustment factors and indices. The Secretary is required to study and report to the Congress on the construction of the index by April 1, 1994.

****755*523** The Secretary would conduct a study and, within 1 year of enactment, report to the Congress on: (1) the data necessary to review and revise the GPCI indices, including the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses) and malpractice expenses; the weights assigned to the input components of such shares; and the index values assigned to such components; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways to address such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every 3 years; and (4) the costs of developing more accurate and timely data sources.

(b) Development of Criteria for Use in Determining Payment Localities.–The Physician Payment Review Commission would conduct a study to develop criteria the would be used for redefining the localities used within States for adjusting physician fees under the RB RVS. The Commission would include the results of the study in it's 1994 annual report to Congress.

Effective date

Effective upon the date of enactment.

Section 13445. Extra-billing

Present law

(a) Limitations on Beneficiary Liability–OBRA 89 established limits on the amount above the Medicare approved payment amount nonparticipating physicians may charge Medicare beneficiaries. OBRA 89 permitted the Secretary to impose

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sanctions on physicians who knowingly and willfully bill above the limiting charge on a repeated basis. However, it did not specifically prohibit physicians from billing beneficiaries more than the limiting charge. OBRA 89 also did not require physicians to make refunds to beneficiaries when they billed above the limiting charge and did not absolve beneficiaries from liability for amounts billed above the Medicare limiting charge.

(b) Pre-Payment Screening of Claims–Carriers are not currently required by law to screen unassigned claims submitted by nonparticipating physicians prior to payment in order to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges–There is currently no requirement that beneficiaries be given information on the Explanation of Medicare Benefits (EOMB) form if physicians have charged beneficiaries in excess of the limiting charge.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule–The 5 percent differential in payments to nonparticipating physicians and suppliers does not apply to nonphysician services furnished under the Medicare physician fee schedule. These services generally consist of the technical components of services, such as services rendered by free-standing radiology centers or independent physiological laboratories.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners–There is some ambiguity in current law regarding the ****756*524** application of mandatory assignment rules for certain nonphysician practitioners.

Explanation of provision

(a) Limitations on Beneficiary Liability–Non-participating physicians and nonparticipating suppliers would be prohibited from billing or collecting from any person an actual charge in excess of the Medicare limiting charge. No person would be liable for payment of any amount billed in excess of the limiting charge. Physicians, suppliers and other persons who bill or collect amounts exceeding the limiting charge would be required to: (1) refund the full amount collected in excess of the limiting charge; (2) reduce the outstanding balance owed for other items and services furnished to the individual by the amount of the charge exceeding the limiting charge and refund any amount in excess of the outstanding balance; or (3) in the case of where the excess charges have not been collected by the physician, reduce the actual charge billed for the service to the amount approved by Medicare.

Carriers would be required to notify a physician within 30 days if the physician has billed in excess of the limiting charge. The physician would be required to refund or credit excess charges within 30 days after the date the physician, supplier, or other person is notified by the carrier of the violation.

A physician who (1) knowingly and willfully bills or collects amounts in excess of the limiting charge on a repeated basis; or (2) fails to comply with the refund requirements would be subject to sanctions in accordance with Section 1842(j) of the Social Security Act.

The Committee understands that Medicare carriers currently ask for a refund where the actual charge exceeds the limiting charge by at least $1. Similarly, Medicare carriers include information on the Explanation of Medicare Benefits form where the limiting charge exceeds the actual charge by at least $1. The Committee believes that the use of a $1 nominal threshold before application of the refund provision (as well as for the reduction of an actual charge where the physician has not collected and for the EOMB) is an appropriate policy that would be consistent with the intent of this provision.

(b) Pre-Payment Screening of Claims–Carriers would be required to screen 100 percent of unassigned claims submitted by non-participating physicians prior to making payment to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges–Carriers would be required to provide limiting charge information on the Explanation of Medicare Benefits form after the submission of an unassigned claim which exceeds the limiting charge, and to include on such forms information relating to the beneficiary's right to a refund of any excess amounts collected.

The Secretary would report to the Congress annually on the extent to which annual charges exceeded limiting charges, the number and types of services involved, and the average amount of excess charges.

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(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule–The 5 percent differential ****757*525** between payments to participating and nonparticipating physicians and suppliers and limiting charge restrictions would apply to: the technical components of nonphysician services paid on the basis of the physician fee schedule, services of nonparticipating suppliers or other persons who furnish a physician's service that is paid for under the physician fee schedule, and services that would be paid under the fee schedule but have been excluded from the fee schedule by the Secretary.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners–Specifies that physicians' assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers and clinical psychologists could only bill for services on an assignment-related basis and that no person is liable for amounts billed in violation of the assignment-related basis. The Secretary could impose sanctions under Section 1842(j) of the Social Security Act on a practitioner who knowingly and willfully bills in violation of this requirement.

Effective date

Except as otherwise provided, subsections (a) and (d) would be effective on enactment, except as it applies to services of non-participating suppliers or other persons which would be effective for services furnished after January 1, 1994; subsection (b) would apply to contracts with carriers as of January 1, 1994; subsection (c) would apply to forms provided on January 1, 1994; and subsection (e) would be effective for services furnished on or after January 1, 1994.

Section 13446. Development of RB RVS for Pediatric Services

Present law

No provision.

During the development of the RB RVS by Harvard University, pediatric services were included in the initial study. These data were not fully refined by Harvard nor were they refined by the Secretary during further development of the RB RVS.

Explanation of provision

The Secretary would fully develop and refine by July 1, 1994 the relative values for the full range of pediatric services. The Secretary would conduct a study of the relative values for pediatric and other services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting the study, the Secretary would consult with appropriate organizations representing pediatricians and other physicians, and submit a report to the Congress by July 1, 1994.

Effective date

Effective upon the date of enactment.

****758*526** Section 13447. Antigens Under RB RVS

Present law

In general, physician services are paid under the RB RVS. Antigens used in allergy immunotherapy currently are paid under a reasonable charge basis.

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Explanation of provision

Payments for antigens and related services would be paid under the RB RVS physician fee schedule.

Effective date

Effective January 1, 1995.

Section 13448. Claims Relating to Physician Services

Present law

OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

Explanation of provision

The Secretary would be prohibited from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for obtaining unique identifier numbers, or for responding to inquiries concerning the status of pending claims.

The Secretary would be permitted to recognize substitute billing arrangements between two physicians. In order to be recognized, such substitute billing arrangements would be required either to be informal, reciprocal, coverage agreements or per diem or other fee-for-time agreements. The duration of such agreements would be limited to 60 continuous days, and claims for services provided pursuant to such agreements would be required to include the unique identifying number of both physicians. These requirements would be effective for services provided under such arrangements in the first month beginning more than 60 days after the enactment of this Act.

Effective date

Effective upon the date of enactment.

Section 13449. Miscellaneous Technical Corrections

Present law

(a) Overvalued Procedures–OBRA 90 subjected all unsurveyed overvalued services to a 6.5 percent reduction unless the law specifically exempted them from the reduction. Unsurveyed services are those not included in earlier surveys conducted to determine relative values of physicians' services; these unsurveyed services were considered to be overvalued. The list of services specifically exempted from the 6.5 percent reduction contained certain errors.

(b) Radiology Services–OBRA 90 reduced the locally defined conversion factors for radiology services paid on the basis of the radiology ****759*527** fee schedule. The maximum reduction was not to exceed 9.5 percent. However, OBRA 90 contained an error that would increase conversion factors in some localities.

(c) Anesthesia Services–OBRA 87 established a fee schedule for anesthesia services based on a relative value guide for anesthesia services and local conversion factors. OBRA 90 reduced the local conversion factors. The maximum reduction was not to exceed 9.5 percent. However OBRA 90 contained an error that would increase the conversion factors in some

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localities.

(d) Assistants at Surgery–OBRA 90 specified that payment to a physician serving as an assistant at surgery cannot exceed 16 percent of the payment made for the global surgical service.

(e) Technical Components of Diagnostic Services–OBRA 90 capped the reasonable charge for technical components of specified diagnostic services at the national median charge for the service in all localities.

****760** (f) Statewide Fee Schedules–OBRA 90 required the Secretary to treat the States of Nebraska and Oklahoma as statewide payment localities if they met certain requirements specified in the law. Each member of the Congressional delegation from those States and organizations representing urban and rural physicians would have to agree to the statewide locality provision. This requirement raised constitutional concerns relating to the separation of powers between the executive and legislative branches.

(g) Reciprocal Billing Arrangements–OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

(h) Study of Aggregation Rule for Claims of Similar Physician Services–OBRA 90 required the Secretary to study the effects of aggregating physician claims and report to the Congress by December 31, 1992.

Explanation of provision

(a) Overvalued Procedures–Some procedures would be deleted from the list of exempted services and errors in the names of other services would be corrected. The procedures that would be deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

(b) Radiology Services–The conversion factors below the maximum reduction amount would not be permitted to be increased. The provision makes other technical changes to OBRA 90.

(c) Anesthesia Services–The conversion factors below the maximum reduction amount would not be permitted to increase. The provision makes other technical changes to OBRA 90.

(d) Assistants at Surgery–The application of the extra-billing limits to physicians serving as assistants at surgery would be clarified.

(e) Technical Components of Diagnostic Services–The limits on payment for the technical component of diagnostic services would not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

***528** (f) Statewide Fee Schedules–The OBRA 90 requirement for agreement from members of Congress would be eliminated, and Nebraska and Oklahoma would be statewide localities beginning in 1991.

(g) Reciprocal Billing Arrangements–OBRA 90 would be amended to clarify the services that may be covered under reciprocal billing. All physician services, including services incident to physician services, would be covered. The provision would also permit reciprocal billing arrangements that are both informal or reciprocal (as in current law) or involve per diem or other fee-for-time compensation.

(h) Study of Aggregation Rule for Claims of Similar Physician Services–The date that the study must be submitted to the Congress would be changed from December 31, 1992 to December 31, 1993.

A number of technical and drafting errors contained in OBRA 90 would be made through minor and conforming amendments.

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Effective date

Effective as if included in OBRA 90.

SUBCHAPTER C–AMBULATORY SURGICAL CENTER SERVICES

Section 13451. Designation of Certain Hospitals As Eye and Ear Hospitals

Present law

Hospitals designated as eye, or as an eye and ear hospitals, receive a blended payment rate for ambulatory surgery for which 75 percent is based on the hospital's costs and 25 percent is based on the rate paid to freestanding Ambulatory Surgery Centers (ASCs). This special rule applies for cost reporting periods beginning on or after October 1, 1988 and before January 1, 1995. In general, the blended payment rate to hospitals for outpatient surgery is based 42 percent on costs and 58 percent on the ASC rate. To receive designation as an eye, or eye and ear hospital, a facility must specialize in these services, receive more than 30 percent of its revenue from outpatient services, and must have been an eye, or an eye and ear hospital, on October 1, 1987.

Explanation of provision

The eligibility for designation as an eye, or as an eye and ear hospital, would be extended to hospitals that otherwise meet the criteria but, on October 1, 1987, operated as a physically separate, or distinct eye and ear unit of a general acute care hospital, which has since discontinued its other acute care operations.

Effective date

Effective for portions of cost reporting periods beginning on or after January 1, 1994.

****761*529** Section 13452. Extension of Payment Limit for Intraocular Lenses (IOLs)

Present law

OBRA 90 established a payment limit of $200 for intraocular lenses inserted during 1991 and 1992.

Explanation of provision

The $200 payment limit for IOLs would be extended for 2 years, through 1994.

The Secretary would conduct a study of the recent costs of IOLs provided to Medicare beneficiaries. Included in the study would be an examination of issues related to new technology lenses. The Committee is concerned that payment policy not adversely affect the access of Medicare beneficiaries to new technology lenses. The Secretary would submit a report on the study, including recommendations on the reasonable costs and charges for IOLs, within 1 year of the date of enactment.

In addition, the proposal includes various technical amendments to OBRA 90, which would be effective as if included in OBRA 90.

Effective date

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Except as otherwise provided, the proposal would be effective on enactment.

Section 13453. Technical Amendments Relating to Ambulatory Surgical Centers

Present law

(a) Payment Amounts–Current law requires the Secretary to update ambulatory surgery center payment rates by July 1, 1987 and annually thereafter, if the Secretary determines that an update is appropriate.

****762** (b) Adjustments to Payment Amounts for New Technology Intraocular Lenses–OBRA 90 included a provision capping payments for IOLs at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200. The OBRA 90 conferees also agreed to a provision providing for a process by which the fee for new technology intraocular lenses (IOLs) could be adjusted. Statutory language reflecting this agreement was inadvertently omitted from OBRA 90.

Explanation of provision

(a) Payment Amounts–The update for ambulatory surgery services would be established, beginning with fiscal year 1995, at the CPI–U for the 12-month period ending with March of the preceding year. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, taken not later than January 1, 1994 and updated every 5 years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

***530** (b) Adjustments to Payment Amounts for New Technology Intraocular Lenses–The Secretary would be required, within 1 year after the date of enactment, to develop and implement a process for reviewing reimbursement for new technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also would specify the administrative procedures for reviewing and approving new technology IOLs.

Effective date

Except as otherwise provided, effective as if included in OBRA 90.

SUBCHAPTER D–DURABLE MEDICAL EQUIPMENT

Section 13461. Certification of Suppliers

Present law

(a) Certification of Suppliers–There are no statutory standards that suppliers of durable medical equipment (DME), prosthetic devices, prosthetics and orthotics, surgical dressings, splints, casts, and other devices for fractures and dislocations, home dialysis supplies, and immunosuppressive drugs must meet in order to supply items to Medicare beneficiaries.

(b) Prohibition Against Multiple Billing Numbers–No provision.

(c) Standardized Certificates of Medical Necessity–There are no provisions relating to standardized medical necessity certificates.

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(d) Distribution of Certificates of Medical Necessity–OBRA 90 prohibited suppliers of durable medical equipment from distributing, for commercial purposes, completed or partially completed certificates of medical necessity to physicians or Medicare beneficiaries.

(e) Uniform National Coverage and Utilization Review Requirements–There are no provisions relating to uniform coverage or utilization review criteria for DME. HCFA is currently in the process of developing uniform coverage and utilization review policies for 100 items.

(f) Studies–

(i) Use of covered items by disabled beneficiaries–No provision.

(ii) Variations in quality of equipment–No provision.

Explanation of provision

(a) Certification of Suppliers–Suppliers of medical equipment and supplies (durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings and such other items as the Secretary may determine and home dialysis supplies and equipment and immunosuppressive drugs) will not be reimbursed for these items unless they have a Medicare supplier number. A supplier may not obtain a supplier number unless the supplier meets uniform national standards prescribed by the Secretary. By January 1, 1995, the Secretary would revise the standards.

The standards would require suppliers to (1) comply with all applicable State and Federal licensure and regulatory requirements; ****763*531** (2) maintain a physical facility and inventory on an appropriate site; (3) have proof of appropriate liability insurance; (4) meet other requirements established by the Secretary. In addition, the requirement for suppliers to obtain a supplier number does not apply to medical equipment and supplies furnished as an incident to a physician's service. The Secretary is prohibited from delegating the responsibility to determine whether the supplier meets the standards necessary to obtain a supplier number.

(b) Prohibition Against Multiple Billing Numbers–The Secretary would be prohibited from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(c) Standardized Certificates of Medical Necessity–The Secretary would develop one or more standardized certificates of medical necessity for medical equipment and supplies if a certificate of medical necessity is required by the Secretary.

(d) Distribution of Certificates of Medical Necessity–The OBRA 90 provision prohibiting suppliers of medical equipment and supplies from distributing completed or partially completed certificates of medical necessity would be modified. Suppliers of potentially overused and abused items would be prohibited from distributing completed or partially completed certificates of medical necessity. Suppliers of items which are not potentially overused and abused would be permitted to complete information identifying beneficiaries and suppliers, a description of the item, a product code identifying the item, and any other information required by the Secretary. If a supplier provides any of the above information on a certificate of medical necessity, the supplier would be required to include the fee schedule amount and the supplier's charge prior to distribution to the physician for completion. Suppliers who violate the provisions would be subject to a civil money penalty in an amount not to exceed $1,000 for each certificate of medical necessity so distributed.

(e) Uniform National Coverage and Utilization Review Requirements–The Secretary would, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, develop and establish uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies. The criteria would be published as instructions to carriers and intermediaries, and no further publication, including Federal Register publication, would be required.

The Secretary would select an item for development of national coverage and utilization review criteria if: (1) the item is

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frequently rented or purchased by beneficiaries; (2) the item is frequently subject to a determination that it is not medically necessary; or (3) coverage or utilization review criteria applied to the item is not consistent among carriers. The Secretary would be required annually to review and determine whether items not on the list should be subject to uniform national coverage and utilization review criteria and to subject them to these criteria if necessary. The Secretary would also be required to submit a report to the Congress by July 1, 1995 analyzing the impact of these uniform criteria on the utilization of items subject to the criteria by Medicare beneficiaries.

****764*532** (f) Studies–

(i) Use of covered items by disabled beneficiaries–The Secretary would study and report to the Congress by May 1, 1994 on the effects of the methodology for determining payments for durable medical equipment items and supplies on the ability of persons entitled to disability benefits to obtain equipment, including customized items.

(ii) Variations in Quality of Equipment–The Secretary would study and report to the Congress by July 1, 1994, describing prosthetic devices or orthotics and prosthetics that do not require individualized or custom fitting and adjustment and report an appropriate method for determining the amount of payment for such items under the program that do not require individualized or custom fitting and adjustment.

Effective date

Subsections (a) would be effective beginning after October 1, 1993. Subsections (b), (e) and (f) would be effective on the date of enactment. Subsections (c) and (d) would apply to certificates of medical necessity issued on or after October 1, 1993.

Section 13462. Prohibition Against Carrier Forum Shopping

Present law

There are no prohibitions against carrier forum shopping in current DME law. HCFA is currently establishing four regional carriers to process all claims for beneficiaries residing within their areas.

Explanation of provision

The Secretary would be authorized to designate in a regulation one carrier for one or more entire regions to process all claims within the region for covered durable medical equipment, prosthetic devices, and orthotics and prosthetics. Suppliers would be required to submit claims to the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

Effective date

Effective for items and services furnished on or after October 1, 1993.

Section 13463. Restrictions on Certain Marketing and Sales Activity

Present law

No provision.

Explanation of provision

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Suppliers would be prohibited from making unsolicited telephone contacts with Medicare beneficiaries, unless the individual gives permission to the supplier, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare would not pay for items provided subsequent to a prohibited telephone contact. The Secretary would be required to exclude from ****765*533** programs under the Social Security Act suppliers who knowingly make prohibited telephone contacts to such an extent that the supplier's conduct establishes a pattern of contacts in violation of the prohibition. Beneficiaries would not be liable for the cost of items provided as a result of prohibited telephone contacts, and the supplier would be required to refund any amounts collected on a timely basis or be subject to certain sanctions.

Effective date

Effective 60 days after enactment.

Section 13464. Anti-kickback Clarification

Present law

Current law exempts employees in bona-fide employment relationships from penalties assessed for knowingly and willfully soliciting or receiving remuneration (including kickbacks, bribes, or rebates) or offering or paying remuneration as an incentive for Medicare business.

Explanation of provision

The exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies would not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

Effective date

Effective 60 days after enactment.

Section 13465. Limitations on Beneficiary Liability for Non-covered Services

Present law

No provision.

Explanation of provision

Medicare beneficiaries would not be financially liable for covered items furnished by a supplier on an unassigned basis if: (1) the supplier is excluded from Medicare participation; (2) Medicare has denied payment for the item in advance; or (3) the supplier does not meet Medicare standards for suppliers of medical equipment and supplies.

Effective date

Effective for services provided on or after October 1, 1993.

Section 13466. Adjustments for Inherent Reasonableness

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Present law

The Secretary is permitted to increase or decrease the Medicare DME fee schedules in cases where the payment amount is grossly excessive or grossly deficient and not inherently reasonable. Such adjustment must reflect costs in the base year of the fee schedules.

****766*534** Explanation of provision

The Secretary would determine whether the payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators (TENS), and any other items considered appropriate by the Secretary are inherently reasonable and would adjust payments for these items if the amounts are not inherently reasonable. Adjustments for these items would be based on the prices and costs applicable at the time the item is furnished.

Effective date

Effective on the date of enactment.

Section 13467. Treatment of Nebulizers and Aspirators

Present law

There are five categories in the DME fee schedule. Aspirators and nebulizers are in a category entitled items requiring frequent and substantial servicing. This category is intended to include items which require frequent servicing in order to avoid imminent danger to a beneficiary's health.

Explanation of provision

Aspirators and nebulizers would be removed from the category of DME items requiring frequent and substantial servicing. It is anticipated that the Secretary would, in general, reclassify most of these items as routinely purchased equipment. Disposable supplies used in conjunction with aspirators and nebulizers would be placed in the category of inexpensive and other routinely purchased equipment.

Effective date

Effective for items and services provided on or after January 1, 1994.

Section 13468. Payment for Ostomy Supplies and Other Supplies

Present law

Ostomy supplies, tracheotomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits.

Explanation of provision

Ostomy supplies, tracheotomy supplies and urologicals would be subject to national payment limits. Payment for surgical dressings would be made in a lump sum in an amount equal to 80 percent of the lesser of the actual charge for the item or the national payment limit (computed based on local payment amounts using average reasonable charges for the 12-month period

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ending December 31, 1992, increased by the covered item update for 1993 and 1994).

These provisions would not apply to surgical dressings furnished incident to a physician's professional service or furnished by a home health agency.

****767*535** The DME fee schedule amount for transcutaneous electrical nerve stimulation (TENS) devices would be reduced by 30 percent.

Effective date

Effective items and services provided on or after January 1, 1994.

Section 13469. Miscellaneous and Technical Corrections

Present law

(a) Updates to Payment Amounts–OBRA 90 contains a drafting error regarding the update to the durable medical equipment fee schedule for 1991 and 1992.

(b) Potentially Overused Items and Advance Determinations of Coverage–OBRA 90 included two provisions regarding special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting so that they do not properly reflect the conference agreement.

(c) Study in Variations in Durable Medical Equipment Supplier Costs–OBRA 90 provided for a system of upper and lower limits on DME fees. The OBRA 90 conferees agreed to a study of regional variations in durable medical equipment supplier costs which was not included in the statutory language.

****768** (d) Oxygen Retesting–OBRA 90 included a provision requiring periodic retesting of beneficiaries receiving oxygen if their initial blood gas reading value was at or above a partial value of 55.

Explanation of provision

(a) Updates to Payment Amounts–The OBRA 90 error would be corrected by specifying that the 1991 and 1992 update is the CPI–U minus 1 percentage point.

(b) Potentially Overused Items and Advance Determinations of Coverage–OBRA 90 would be modified with respect to treatment of potentially overused items. The Secretary would be able to add items to the list of potentially overused items if they are marketed directly to beneficiaries, if offers to waive coinsurance are made, if items have been subject to consistent patterns of overutilization, or if a high proportion of claims for an item are denied based on absence of medical necessity. Payment for items on this list would not be made unless the carrier has subjected the claim to special scrutiny or has determined in advance whether an item is medically necessary and covered by Medicare. Carriers would also be required to make advance coverage decisions for customized items and to meet criteria developed by the Secretary to assure that advance coverage decisions are made on a timely basis.

(c) Study in Variations in Durable Medical Equipment Supplier Costs–The Secretary would be required to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments.

***536** (d) Oxygen Retesting–The OBRA 90 language regarding the arterial blood gas values would be amended to require retesting when a beneficiary's initial value is at or above 56.

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In addition, the proposal includes certain technical corrections to Sections 4152 and 4153 of OBRA 90.

Effective date

Effective as if included in OBRA 90.

SUBCHAPTER E–OTHER PROVISIONS

Section 13471. Clarifying Payments for Medically-directed Certified Registered Nurse Anesthetists

Present law

OBRA 90 set payment levels for both non-medically directed certified registered nurse anesthetists (CRNAs) and medically directed CRNAs. Payment levels for non-medically CRNAs were set at 100 percent of the amount paid to physicians for providing the same service and payments to medically directed CRNAs were set at 70 percent of the amount paid to physicians. These services are paid on the basis of a fee schedule which contains a dollar conversion factor. OBRA 90 specified the dollar conversion factors for these payments through 1997 based on the amount physicians would be paid for these services. Since that time, however, the actual amounts paid to physicians for these services have been lowered as a result of refinements to physician payments. As a result, the dollar conversion factors specified in the law are too high. However, since OBRA 90 also contains a provision which specifies that payments to CRNAs may not exceed the amount paid to physicians for the same service, only payments to medically directed CRNAs require a statutory correction.

Explanation of provision

The conversion factor used to determine payments to medically-directed CRNAs would be frozen at $10.75, from 1993 through 1997. In subsequent years, the update for these services would be the same as for physician anesthesia services.

Effective date

Effective for services furnished on or after January 1, 1994.

Section 13472. Extension of Alzheimer's Demonstration Projects

Present law

OBRA 86 authorized $40 million to conduct up to 10 Alzheimer's disease demonstration projects to provide comprehensive services to Medicare beneficiaries with Alzheimer's disease. The demonstrations were originally authorized for 3 years, but were extended an additional year in OBRA 90.

Explanation of provision

The Alzheimer's disease demonstration projects would be extended for an additional year.

****769*537** Effective date

Effective upon the date of enactment.

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Section 13473. Oral Cancer Drugs

Present law

Under current law, Medicare coverage for outpatient prescription drugs (with exceptions for immunosuppressive drugs and erythropoietin) is limited to drugs which are not to be self-administered. Drugs taken orally are not covered.

Explanation of provision

Medicare coverage would be extended to include oral cancer drugs if they are the same chemical entity as anticancer drugs covered by Medicare when administered intravenously.

In addition, the Secretary would establish a uniform national coverage policy for the "off-label" use of drugs in anti-cancer therapy by providing guidance to Medicare carriers to assist them in making coverage determinations. In providing such guidance, the Secretary would clarify that coverage is limited to the Food and Drug Administration (FDA) approved drugs but not necessarily limited to the uses approved by the FDA as described on the label.

The guidance regarding coverage decisions would be based on (1) the inclusion of such drugs in one of the three specified major medical compendia, or (2) supportive clinical research regarding the off-label use of such drugs that appears in peer-reviewed medical literature. The Secretary would specify the medical journals which would be appropriate for consideration by the carriers in making these coverage decisions.

The Committee intends that the inclusion of uses in the specified compendia, in the absence of evidence to the contrary, would be considered sufficient evidence for justifying coverage.

The Secretary would study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies (where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board) and develop criteria for such coverage.

Effective date

Effective for drugs provided on or after January 1, 1994.

Section 13474. Part B Premium Payments for Late Enrollment

Present law

(a) Part B Premium Penalty for Late Enrollment–Individuals who enroll in Medicare Part B after the applicable enrollment period are subject to an increased premium for late enrollment. The monthly premiums are increased by 10 percent for every 12 months of late enrollment. In general, the premium increase is calculated based upon the number of months of delayed enrollment beyond the initial enrollment period. In the case of individuals who delay enrollment because they have primary coverage under an employer ***538** group health plan, months of enrollment in the employer ****770** group health plan are not included for purposes of calculating the increased premium.

(b) Part B Premium Payments by States–States are permitted to pay premiums on behalf of individuals who enroll in Part B.

Explanation of provision

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(a) Part B Premium Penalty for Late Enrollment–The part B premium penalty for delayed enrollment would be capped at 25 percent for Federal employees who meet the following conditions. First, at the time of the initial enrollment period, the individual delayed enrollment because he or she was enrolled in a group health plan that provided items or services covered under Part B. Second, the individual was enrolled in a group health plan that stopped providing coverage of such services subsequent to the individual's initial enrollment period.

(b) Part B Premium Payments by States–The Secretary would be authorized to enter into agreements with States for purposes of allowing States to make premium payments for penalties associated with late enrollment under Part B. States would be permitted to make quarterly payments on a lump-sum basis.

Effective date

Subsection (a) would apply to premiums for months beginning January 1, 1992. Subsection (b) would be effective upon the date of enactment.

Section 13475. Coverage of Speech-Language Pathologists and Audiologists

Present law

The services of speech therapists and audiologists are covered under certain limited circumstances. In addition, speech therapy is covered under the home health benefit. The law does not include a specific definition of these services or providers.

Explanation of provision

The term "speech pathologist" would be changed to "speech-language pathologist" where it appears, except that this amendment would not change the definition of services covered in any setting. A statutory definition of speech-language pathologists and audiologists would be established, consistent with current coverage guidelines.

Effective date

Effective on January 1, 1994.

Section 13476. Municipal Health Service Demonstration Projects

Present law

OBRA 89 extended existing waivers for the four municipal health service demonstration projects through December 31, 1993, and provided for a study of the waiver program with respect to the quality of health care and beneficiary costs.

****771*539** Explanation of provision

The waivers for the four municipal health service demonstration projects would be extended through December 31, 1997. In conducting the study mandated under OBRA 89, HCFA would include consideration of costs to Medicaid and other payers, access to care, outcomes, beneficiary satisfaction, and utilization differences among the different populations being served by the centers.

Effective date

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Effective upon the date of enactment.

Section 13477. Treatment of Certain Indian Health Programs and Facilities as Federally Qualified Health Centers

Present law

Medicare provides payments to services provided in certain qualified health centers, known as Federally Qualified Health Centers (FQHC).

Explanation of provision

The current definition of Federally Qualified Health Centers would be revised to include programs and facilities operated by Indian tribes under the Indian Self-Determination Act.

Effective date

Effective for services provided on or after January 1, 1994.

Section 13478. Other Technical Amendments Relating to Part B of the Medicare Program

Present law

(a) Revision of Information on Part B Claims–Each Part B claim for which the entity submitting the claim knows or has reason to believe that there has been a referral by a physician must include the name and provider number of the referring physician and must indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers–OBRA 90 provided for direct reimbursement for the services of clinical psychologists and clinical social workers. The Secretary was required to develop criteria for psychologists' services under which psychologists would be required to consult with a patient's attending physician.

(c) Reports on Hospital Outpatient Payment–OBRA 87 required the Prospective Payment Assessment Commission (ProPAC) to conduct a study of Medicare payment for hospital outpatient services. Part of the study was to be submitted to the Congress by July 1, 1990 and part by March 1, 1991. Section 1135(d)(6) of the Social Security Act also requires the Secretary to report to the Congress on the development of a prospective method for ambulatory surgery services.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments–Payment for outpatient radiology and diagnostic services is limited to a blend of the hospital's costs and physician ****772*540** fee schedule that would apply if the procedure were performed in a physician's office.

(e) Payments to Nurse Practitioners in Rural Areas–OBRA 90 provided for direct reimbursement of nurse practitioners and clinical nurse specialists in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital care, payments for nurse practitioners and clinical nurse specialists were not included in this provision.

(f) Other Technical and Conforming Amendments–Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment period applicable to others. However, they cannot enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on the first day of the month in which the individual is no longer enrolled in an employer group health plan. The OBRA 90 conferees intended to modify this provision, but statutory language to that effect was omitted from the law.

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Explanation of provision

(a) Revision of Information on Part B Claims–The claim form would be required to include the unique physician identification number (UPIN), and the requirement that claims indicate whether the referring physician is an investor in the entity would be repealed.

(b) Consultation for Social Workers–Clinical social workers would be required to consult with a patient's attending physician in the same manner as clinical psychologists.

(c) Reports on Hospital Outpatient Payment–The requirement for the preparation of reports contained in Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act would be repealed.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments–Outpatient payment limits would apply to diagnostic services. The physician component of the limit would be based on the resource based relative value scale.

(e) Payments to Nurse Practitioners in Rural Areas–The services of nurse practitioners and clinical nurse specialists would be added to the list of services excluded from the definition of inpatient hospital services.

(f) Other Technical and Conforming Amendments–The special enrollment period would be modified to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled in the group health plan, rather than after they leave the plan. If an individual enrolls in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual) on the first day of any of the following 3 months).

Various technical and conforming amendments to Sections 4154 through 4164 of OBRA 90 would be made.

Effective date

Except as otherwise provided, effective as if included in OBRA 90.

****773*541** SUBCHAPTER F–PART B PREMIUM

Section 13481. Part B Premium

Present law

From 1984 through 1990 the Part B premium was set to cover 25 percent of program costs for aged beneficiaries. The remaining 75 percent was covered by general revenues. OBRA 90 established the monthly Part B premium in statute through 1995 to cover 25 percent of program costs as follows: $29.90 in 1991, $31.80 in 1992, $36.60 in 1993, $41.10 in 1994 and $46.10 in 1995. In 1996, the method for calculating the premium will revert to the formula used prior to 1984, so that the Part B premium increases will be limited by the percentage by which cash benefits were increased in the previous year under the COLA provisions of the Social Security program.

A special provision applies to low-income persons who have their premiums deducted from their Social Security checks. If the Social Security COLA is less than the premium increase, the premium increase otherwise applicable is reduced to prevent a reduction in the individual's Social Security check.

Explanation of provision

The Part B premium would cover 25 percent of program costs in 1996 and 1997. In subsequent years, the Part B premium would increase by the percentage by which cash benefits are increased under the COLA provisions of the Social Security

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program.

Effective date

Applies to premiums beginning January 1, 1996.

Chapter 3. Amendments Relating to Parts A and B and Other Health Amendments

SUBCHAPTER A–ELIMINATION OF UPDATES

Section 13501. Direct Medical Education

Present law

Payments to hospitals for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index.

Explanation of provision

Per-resident amounts would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

Effective date

Effective upon the date of enactment.

Section 13502. Home Health Services

Present law

Home health services are reimbursed on a reasonable cost basis, subject to aggregate cost limits which are updated annually.

****774*542** Explanation of provision

Cost limits applicable to home health services would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

Effective date

Effective upon the date of enactment.

SUBCHAPTER B–MEDICARE SECONDARY PAYER PROVISIONS

Section 13511. Extension of Transfer of Data

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Present law

OBRA 89 authorized the establishment of a database to identify working beneficiaries and their spouses to improve identification of cases in which Medicare is secondary to other third party payers. The datamatch links Internal Revenue Service (IRS) tax records with data from the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA). OBRA 90 extended through September 30, 1995 the requirements established in OBRA 90 pertaining to identification of secondary payer situations.

Explanation of provision

(a) Extension of Transfer of Data–The authorization for requirements pertaining to the IRS/SSA/HCFA datamatch would be extended through September 30, 1998.

The provision, effective as if included in OBRA 89 would clarify that the Medicare secondary payer provisions do not apply to secondary payer situations identified after October 1, 1989 for services provided prior to such date to members of religious orders who are considered “deemed employees” because of an election of Social Security coverage.

The Secretary would be authorized to establish a minimum income threshold to simplify the datamatch process.

Effective date

Effective upon the date of enactment.

Section 13512. Three-Year Extension of Medicare Secondary Payer for Disabled Beneficiaries

Present law

Medicare is secondary payer to certain group health plans, offered by employers of 100 or more, covering disabled beneficiaries. The authority for this provision expires September 30, 1995.

Explanation of provision

The Medicare secondary payer requirements for disabled beneficiaries would be extended for 3 additional years through September 30, 1998.

Effective date

Effective upon the date of enactment.

****775*543** Section 13513. Three-Year Extension of 18-Month Rule for ESRD Beneficiaries

Present law

Medicare is secondary payer to certain employer group health plans covering beneficiaries with end stage renal disease (ESRD) beneficiaries during the first 18 months of a beneficiary’s entitlement to Medicare on the basis of ESRD. The authority for this provision expires September 30, 1995.

Explanation of provision

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The Medicare secondary payer requirements for beneficiaries with end stage renal disease (ESRD) would be extended for 3 additional years through September 30, 1998.

Effective date

Effective upon the date of enactment.

Section 13514. Medicare Secondary Payer Reforms

Present law

The Department of HHS identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies including the Internal Revenue Service and the Social Security Administration.

The Secretary is authorized to develop standards, criteria, procedures and reporting requirements to evaluate the performance of organizations facilitating Medicare payments to providers of services. Primary payers are required to make payments for any item or service for which Medicare is secondary payer when they receive notice that payments are due. The Secretary is authorized to charge interest on late recoveries under the Medicare Secondary Payer program.

Explanation of provision

(a) The Administrator of HCFA would be required to mail questionnaires to individuals, before such individuals become entitled to benefits under part A or enroll in part B, to determine whether the individual is covered under a primary plan. In addition, the provision would clarify that payments would not be denied for covered services solely on the grounds that a beneficiary's questionnaire fails to note the existence of other health plan coverage.

(b) Providers and suppliers would be required to complete information on claim forms regarding potential coverage under other plans.

(c) Civil monetary penalties would be established for an entity that knowingly, willfully and repeatedly fails to complete a claim form with accurate information.

(d) Contractors would be required to submit a report to the Secretary annually regarding steps taken to recover mistaken payments. The Secretary would be required to evaluate the performance ****776*544** of contractors in identifying cases in which Medicare is secondary payer.

(e) The provision would clarify the Secretary's authority to charge interest if payment is not received within 60 days after notice is given.

(f) For purposes of determining the application of Medicare secondary payer provisions to employer group health plans, aggregation rules as defined in the Internal Revenue Code would be used to determine size of employer.

(g) The definition of a noncomplying plan would be clarified to include a plan that refuses to refund amounts to HCFA demanded through the Medicare secondary payer provisions.

Effective date

Subsections (a) and (c) would be effective upon the date of enactment. Subsection (b) would apply for items and services furnished on or after January 1, 1994. Subsection (d) would apply to contracts with fiscal intermediaries and carriers for years

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beginning with 1994. Subsection (e) would apply to payments for items and services furnished on or after the date of enactment. Subsection (f) would be effective 90 days after the date of enactment. Subsection (g) would be effective for demands issued after the date of enactment.

SUBCHAPTER C–PHYSICIAN OWNERSHIP AND REFERRAL

Section 13521. Application of Medicare Ban on Self-referrals to All Payers

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities.

Explanation of provision

A physician (or immediate family members of such physicians) with a financial relationship with an entity would be prohibited from referring patients to that entity for the furnishing of designated health services as defined in the following section. This prohibition would apply to patients under Medicare and Medicaid or any private health plan (other than health maintenance organizations).

Section 13522. Extension of Self-referral Ban to Additional Services

Present law

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities.

Explanation of provision

Designated health services would be defined to include the following services: clinical laboratory services, physical and occupational therapy services, radiology services (including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services), radiation therapy services, durable medical ****777*545** equipment, parenteral and enteral nutrition equipment and supplies, prosthetic devices and orthotics and prosthetics, outpatient prescription drugs, home infusion therapy services, home dialysis, home health services, ambulance services, inpatient and outpatient hospital services, comprehensive outpatient rehabilitation facility services, contact lenses, eyeglasses and hearing aids.

Section 13523. Exceptions For Both Ownership and Compensation Arrangements

Present law

There are a series of general exceptions to both the ownership and compensation provisions, including: (1) physicians' services provided by or under the personal supervision of a physician or another physician in the same group practice; and (2) in-office ancillary services. In-office ancillary services are defined as services furnished by the physician himself, another physician in the same group practice, or employees of the physician or the physician's group practice.

To be exempted from the referral ban, the services must be provided in a building in which the physician or other member of the group practice provides services unrelated to laboratory services, or in a central building set up by the group to perform ancillary services for its members. The services must be billed by the physician performing or supervising the services or by that physician's group, or by an entity owned by the physician or the physician's group practice. In addition, the ownership or compensation interests in such in-office ancillary services must meet other requirements that the Secretary may impose by regulation as needed to protect against patient fraud and abuse.

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A number of group practices own and operate satellite facilities in communities other than the community in which the main clinic facility is located.

In addition to the general exceptions, the law includes specific exceptions from just the ownership prohibitions and specific exceptions from just the compensation provisions. The law includes an exception under the ownership prohibition for rural providers. Proposed implementing regulations contain provisions directed at preventing possible abuses of this exception.

Explanation of provision

The exception for in-office ancillary services would apply to all Designated Health Services other than durable medical equipment, parenteral and enteral nutrition equipment and supplies and ambulance services. Ancillary services provided by a group practice with multiple office locations would be exempted from the prohibition on referrals.

Ownership and compensation arrangements relating to the provision of services in rural areas (as defined for purposes of Medicare's hospital prospective payment system) would be exempt from the ban on referrals if substantially all of the services furnished by the entity are furnished to individuals who reside in such a rural area.

****778*546** Section 13524. Exceptions Related Only to Ownership or Investment

Present law

There is a specific exception for ownership in publicly-traded securities. This exception applies only if a corporation had total assets exceeding $100 million at the end of the corporation's most recent fiscal year.

Explanation of provision

The current standard for asset determination under the publicly-traded securities exception would be modified to require that a corporation have stockholder equity in excess of $100 million.

Section 13525. Exceptions Related Only to Compensation Arrangements

Present law

(a) Rental of Office Space–The law includes specific exceptions for the rental of office space.

(b) Rental of Equipment–There is no exception for the rental of equipment.

(c) Employment Arrangements with Hospitals–There is a specific exception for employment arrangements between hospitals and physicians.

(d) Personal Service Arrangements–There are a series of exceptions for other service arrangements, including: (1) services as a medical director; (2) services to an individual receiving hospice care; (3) services furnished to a nonprofit blood center; and (4) administrative services.

(e) Services Under Arrangements–Some group practices operate full-service laboratories and contract with hospitals and other providers to furnish clinical laboratory services to hospital and other provider patients "under arrangements" with such entities. Medicare requires that the hospital or other provider bill for such services. These "under arrangements" services are not protected under the general exception for in-office ancillary services.

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(f) Physician Recruitment–There is a specific exception in the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate.

(g) Isolated Transactions–There is a specific exception in the case of an isolated financial transaction, such as a one-time sale of property.

(h) Payments by a Physician–No provision.

Explanation of provision

(a) Rental of Office Space–The exception for the rental of office space would be clarified to apply for the use of premises if: (i) the lease is set out in writing, signed by the parties and specifies the premises covered by the lease; (ii) the aggregate space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purpose of the rental and is used exclusively by the lessee when being used by the lessee; (iii) the term of the lease is at least 1 year; (iv) the aggregate rental charges are ****779*547** set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the two parties; (v) the lease would be commercially reasonable even if no referrals were made between the parties; (vi) the lease covers all of the premises leased between the parties for the period of the lease; and (vii) the compensation arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

(b) Rental of Equipment–An exception for the leasing of equipment would be added. The requirements for the lease of equipment are the same as those applicable to the lease of premises, except that items (ii), (iv) and (vi) above relate to the equipment rented or leased (rather than the aggregate space).

The Committee intends that charges for space and equipment leases may be based on daily, monthly, or other time-based rates, or rates based on units of service furnished, so long as the amount of the time-based or unit of service rates does not fluctuate during the contract period based on the volume or value of referrals between the parties to the lease or arrangement.

(c) Employment Arrangements with Hospitals–The exception for employment and service arrangements with hospitals would be broadened to include any amounts paid by any employer (including providers other than hospitals) to a physician (or immediate family member) with a bona fide employment relationship for the provision of services. The provision would also modify the standards to allow a physician to be paid shares of overall profits or a productivity bonus based on services performed personally by the physician or family member, if the amount of the remuneration is not determined in a manner that takes into account directly the volume or value of any referrals by a referring physician. The standards for the exception relating to employment and service arrangements between physicians and hospitals under current law also would apply to this broader provision.

(d) Personal Service Arrangements–An exception would be provided for payments from an entity under a personal service arrangement if: (i) the arrangement is set out in writing, specifies the services covered by the arrangement, and is signed by the parties; (ii) the arrangement covers all of the services to be provided by the physician or family member to the entity; (iii) the term of the arrangement is for not less than 1 year; (iv) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangements; (v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value in arm's-length transactions and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referral or business otherwise generated between the parties; (vi) the services performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law; and (vii) the arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

****780*548** The Committee intends that this exception would apply to payments made by a non-profit Medical Foundation under a contract with physicians to provide health care services and which conducts medical research. The requirement that the compensation be paid in advance is not intended to prohibit arrangements where entities pay physicians on a per service basis, as long as the other requirements are satisfied.

(e) Services Under Arrangements–An exception would be provided for health services provided by a group practice billed in

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the name of a hospital if the arrangement is pursuant to the provision of inpatient hospital services and if the arrangement began prior to December 19, 1989 and meets standards similar to those provided for payments for health services of a group practice.

(f) Physician Recruitment–The standards in the current exception relating to physician recruitment would be expanded to include that the arrangement be set out in writing and signed by the parties, and that it specify the benefits provided by the hospital, the terms under which the benefits are to be provided, and the obligations of the parties.

(g) Isolated Transaction–The exception would be clarified to refer to a one-time financial transaction, such as a one-time sale of property or practice.

(h) Payments by a Physician–An exception would be provided for payments by a physician to an entity as compensation for an item or service, if the item or service is furnished at a price that is consistent with the fair market value.

An exception would be provided for payments by a physician to a clinical laboratory in exchange for the provision of clinical laboratory services.

Section 13526. Civil Money Penalties

Present law

The law provides for civil monetary penalties and exclusion for any person that presents or causes to be presented a bill or claim for a service in violation of the self-referral ban.

Explanation of provision

The provision would clarify that a physician that makes a prohibited referral would also be subject to a civil monetary penalty.

Section 13527. Requirements for Group Practices

Present law

(a) Definition of a Group Practice–The law contains a definition of group practice for purposes of the self-referral provision. Under this definition, a group practice is defined as a group of two or more physicians legally organized as partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association in which: (1) each physician group member furnishes substantially the full range of his or her services through the joint use of office space, facilities, equipment, and personnel; (2) substantially all of the services of the physician group members are furnished through the group and billed in the name of the group, with billing receipts treated as receipts of the group; ****781*549** (3) the practice cost expenses and income generated by group members are distributed in accordance with predetermined methodologies; and (4) any additional standards established by the Secretary are met.

The definition of group practice does not specifically address the issue of part-time or independent contractor arrangements. Many group practices, particularly those in smaller communities, arrange for specialists, usually from other communities, to provide services for the group on a part-time basis, usually as independent contractors. Many of these specialists are either already members of another group practice, have their own practice, or have similar contractual arrangements with several group practices.

(b) Faculty practice plans–Faculty practice plans operated by a hospital fall under the definition of group practice only for those services provided within the faculty practice plan.

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Explanation of provision

(a) Definition of a Group Practice–The current standards used to define a group practice would be expanded to include: (i) a group in which no physician who is a member of the group receives compensation based on the volume or value of referrals by the physician except that: (a) a physician can be paid shares of overall profits of the group as long as the share is not determined in any manner which is directly related to the volume or value of referrals by that physician; and (b) a physician can be paid a productivity bonus based on services personally performed or personally supervised by a physician or by another physician in the group so long as the bonus is not determined in any manner which is directly related to the volume or value of referrals by that physician; (ii) in which there are no less than, on average, five physicians for each office location, except where there is only a single office for the entire group practice; and (iii) members of the group would be required to personally conduct no less than 75 percent of the physician-patient encounters of the group practice. Groups would also be required to bill under a billing number assigned to the group.

For purposes of the standard, the term "office location" would be defined as an office where physician services are offered to patients. However, locations consisting solely of diagnostic facilities, nursing homes, treatment facilities (such as physical or occupational therapy centers), or administrative services affiliated with the group practice would not be included in the definition of office location. Any office location which is physically located immediately adjacent to another office location shall be treated as the same office location. Offices located in a rural area (outside MSAs) are not included as an office location as long as at least 85 percent of the physician services at those locations are provided to individuals who reside in such rural areas.

(b) Faculty practice plans–The definition of a faculty practice plan would be expanded to include faculty of an institution of higher learning or a medical school.

Section 13528. Preemption of State Law

No provision.

****782*550** Explanation of provision

The provision would provide that the Federal law would not preempt State laws that were more restrictive.

Section 13529. Miscellaneous Provisions

Present law

(a) Financial Relationship Specified–A financial relationship is defined as including an ownership or investment interest in the entity or a compensation arrangement between the physician (or immediate family member) and the entity.

(b) Minor Remuneration–The term "compensation arrangement" is defined as any arrangement involving any remuneration between a physician (or immediate family member) and an entity. The term remuneration includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(c) Referring Physician–A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such pathologist pursuant to a consultation requested by another physician does not constitute a "referral".

Explanation of provision

(a) Financial Relationship Specified–The definition of financial relationship would be modified to include explicitly that an interest in an entity (i.e., holding company) that holds an investment or ownership interest in another entity is a financial

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relationship for purposes of the referral prohibition.

(b) Minor Remuneration–An exception would be provided for certain minor remuneration, including: (i) the forgiveness of amounts for inaccurate or mistakenly performed tests or procedures, correction of minor billing errors; or (ii) the provision of items, devices, or supplies used solely to collect, transport, process, or store specimens or to communicate test results.

(c) Referring Physician–The provision would clarify that a request by a radiologist for diagnostic radiology services and a radiation oncologist for radiation therapy would not constitute a "referral" by a "referring physician."

Section 13530. Effective dates

Sections 13521, 13522, 13523, 13524, 13526, 13528 and 13529, and Subsections (b), (d), and (f) of section 13525, and subsection (a) of section 13527 would be effective December 31, 1994. Subsection (b), (c), (e), (g), and (h) of section 13525 would be effective for referrals made on or after January 1, 1992.

SUBCHAPTER D–OTHER PROVISIONS

Section 13551. Direct Graduate Medical Education

Present law

(a) Adjustment in GME Base-year Costs for FICA Taxes–Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the ****783*551** consumer price index. The base year is defined as a hospital's cost reporting period beginning on or after July 1, 1985. The law provides for no adjustments to the base year amount.

Prior to enactment of OBRA 90, some teaching institutions were not required to pay either FICA taxes, or to make other retirement contributions for residents. Section 11332(b) of OBRA 90 required these institutions to begin making such payments. However, their base-year costs do not reflect such payments, and the Secretary is prohibited from adjusting their base year costs to reflect the new requirements for such payments.

(b) Adjustments for Certain Family Residency Programs–Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning on or after July 1, 1985. The law provides for no adjustments to the base year amount. In the case of a hospital that did not have an approved medical residency training program or was not participating in the Medicare program during the base year, the Secretary shall provide for an FTE resident amount as the Secretary determines to be appropriate based on approved FTE resident amounts for comparable programs.

(c) Preventive Care Residencies–Medicare payments for the direct costs of medical education are based on the recognized costs during a resident's so-called "initial period" of residency. This period is defined as the period necessary to be board eligible plus 1 year, but in no case more than 5 years. Up to 2 years of a geriatric residency or fellowship are treated as part of the initial residency period, but the time spent in the geriatric program is not counted toward the limitation on the initial residency period.

Explanation of provision

(a) Adjustment in GME Base-year Costs for FICA Taxes–In the case of a hospital that did not pay FICA taxes or make other specified retirement contributions for residents in the base year and that must now pay such taxes or contributions as a result of section 11332(b) of OBRA 1990, the Secretary shall redetermine the FTE resident amount to reflect the amount that would be allowed if the hospital had made such payments during the base year.

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(b) Adjustments for Certain Family Residency Programs–In the case of a facility whose only medical residency program in the cost reporting period that began in fiscal year 1984 was in family and community medicine, received Federal, State or local funding, and had a base year per resident amount of $10,000 or less, the Secretary would be required, in computing FTE resident amount in the base year, to estimate the costs that would have been allowed as reasonable if the program had not received such government assistance, other than such assistance under Medicare or Medicaid programs. The Secretary would also reduce the payment amount so determined by the amount equal to the proportion of such program payments during the base period by Medicare.

(c) Preventive Care Residencies–For the purpose of determining whether a resident is in an initial residency period for payment purposes, a resident in a preventive care residency or fellowship ****784*552** program would be treated in the same way as a geriatric resident or fellow; that is a period of up to 2 years of such training would be treated as part of the initial residency and would not count towards the limitation on such period.

Effective date

The provision related to publicly-funded residency programs applies to cost reporting periods beginning on or after October 1, 1990. The provision related to FICA taxes applies to cost reporting periods beginning on or after October 1, 1992. The provision related to preventive care residencies is effective on enactment.

Section 13552. Immunosuppressive Drug Therapy

Present law

Medicare currently pays for immunosuppressive drug therapy for Medicare beneficiaries who have received organ transplants for 1 year following the date of the transplant procedure.

Explanation of provision

Medicare coverage of immunosuppressive drug therapy would be extended as follows. Effective January 1, 1994, coverage would be extended to an 18-month period. Effective January 1, 1995, coverage would be extended to a 24-month period. Effective January 1, 1996, coverage would be extended to a 30-month period. Effective January 1, 1997, coverage would be extended to a 36-month period.

Effective date

Effective upon the date of enactment.

Section 13553. Reduction in Payments for Erythropoietin

Present law

Medicare is the principal purchaser of erythropoietin (EPO), an anti-anemia drug given to end-stage renal disease (ESRD) beneficiaries with a specified level of anemia. Payment for the drug is made as an add-on to the composite rate paid to facilities for dialysis treatment. Payments to facilities are made in increments of 1,000 unit doses, rounded to the nearest 100 units, with a maximum payment of $11 per 1,000 units.

For ESRD beneficiaries who are not treated through dialysis facilities, payment is made to physicians for drug costs in a variety of ways.

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Explanation of provision

Medicare payments for EPO would be reduced by $1.00 per 1,000 units. The provision would not alter payments for EPO provided in a physician's office.

Effective date

Effective for services furnished on or after January 1, 1994.

****785*553** Section 13554. Qualified Medicare Beneficiary Outreach

Present law

The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles and coinsurance for "Qualified Medicare Beneficiaries" (QMBs). QMBs are those Medicare beneficiaries whose family incomes are below 100 percent of the Federal poverty level and whose resources are no more than twice the amount allowed under SSI.

OBRA 90 accelerated the phase-in schedule for QMB coverage, and required States to pay premiums for QMBs with incomes up to 110 percent of poverty by January 1, 1993, and to 120 percent of poverty by January 1, 1995.

Less than half of eligible beneficiaries are currently participating in the QMB program.

Explanation of provision

The Secretary would be required to establish and implement a method for obtaining information from individuals when they become entitled to benefits under part A or enroll in part B that may be used to determine eligibility for benefits under the QMB program.

Effective date

Effective upon the date of enactment.

Section 13555. Extension of Social Health Maintenance Organization Demonstrations (SHMOs)

Present law

The Deficit Reduction Act of 1984 required the Secretary to grant 3-year waivers for demonstrations of social health maintenance organizations (SHMOs). These demonstrations provide integrated health and long-term care services on a prepaid capitated basis. OBRA 87 required the Secretary to extend the waivers for SHMOs through September 30, 1992. OBRA 90 extended the waivers through December 31, 1995 and required the Secretary to add up to four additional sites. It also authorized $3.5 million for technical assistance and evaluation.

Explanation of provision

The SHMO demonstrations would be extended for an additional 2 years, and would increase the enrollment limit per site to 12,000 beneficiaries. In addition, one of the SHMO demonstration sites would be permitted to enroll Medicare end-stage renal disease (ESRD) beneficiaries.

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Effective date

Effective upon the date of enactment.

****786*554** Section 13556. Hospice Notification to Home Health Beneficiaries

Present law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Home health agencies are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries.

Explanation of provision

Home health agencies would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare participating hospice is located in the geographic area or it is common medical practice to refer patients to hospices out of the area. As a condition of participation in Medicare, home health agencies would be required to provide the information in advance of the patient's coming under care of the agency.

Effective date

The provision would apply to services furnished on or after the first day of the first month beginning more than 1 year after the date of enactment.

Section 13557. Interest Payments

Present law

The Social Security Act requires the payment of interest if payment is not made within 24 days of receipt of a clean claim for payment, and within 17 days in the case of a clean claim from a participating physician.

Explanation of provision

Interest payments would be made on clean claims if payment is not made within 30 days of receipt for fiscal year 1993.

Effective date

Effective upon the date of enactment.

Section 13558. Peer Review Organizations

Present law

(a) Peer Review Organizations–OBRA 90 required Peer Review Organizations (PROs) to provide notice to State licensing entities when a physician is found to have furnished services in violation of Section 1154(a) of the Social Security Act. This

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subsection includes requirements that PROs review the quality of medical care and determine whether certain services are covered by Medicare. As drafted, OBRA 90 requires PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.

(b) Repeal of PRO Precertification Requirement–Under current law, PROs are required to precertify selected surgical procedures.

****787*555** Explanation of provision

(a) Peer Review Organizations–The requirement that PROs notify State boards regarding administrative matters would be eliminated, but PROs would continue to be required to notify them in cases of unnecessary or poor quality care. In addition, drafting errors in OBRA 90 would be corrected.

(b) Repeal of PRO precertification requirement–The requirement that PROs precertify selected surgical procedures would be repealed.

Effective date

Effective upon the date of enactment.

Section 13559. Health Maintenance Organizations

Present law

OBRA 90 required the Secretary to submit a provision to Congress by January 1, 1992 providing for a more accurate method for HMOs paid on a risk basis. The Secretary was required to publish a proposed rule by March 1, 1992. The Comptroller General was required to review and report to the Congress by May 1, 1992 on recommendations to modify the proposed methodology. OBRA 90 also contained a number of minor and technical drafting errors.

Explanation of provision

The Secretary would be required to revise the payment methodology for HMOs for contract years beginning with 1994 to take into account variation in costs associated with beneficiaries for whom Medicare is the secondary payer. The Secretary would be further required to submit a proposal to Congress by October 1, 1993 that provides for revisions to the payment methodology for contract years beginning with 1995. In proposing the revisions, the Secretary would be required to consider (1) the difference in costs associated with beneficiaries with different health status and (2) the effects of using alternative geographic classifications. The Comptroller General would be required to report to the Congress on the proposed revisions no later than 3 months after the Secretary's proposal was submitted.

Effective date

Effective upon the date of enactment.

Section 13560. Medicare Administration Budget Process

Present law

The Balanced Budget and Emergency Deficit Control Act of 1985 provides for certain adjustments to the discretionary spending limits provided in the Act. There are no adjustments relating to the discretionary spending under the Medicare

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program.

Explanation of provision

The Balanced Budget and Emergency Deficit Control Act of 1985 would be amended to provide that to the extent that appropriations are enacted that provide budget authority above a base level of ****788*556** spending in fiscal year 1992 of $1.526 billion, the appropriate discretionary spending limits would be adjusted to accommodate additional budget authority in fiscal years 1994 and 1995. The adjustments would be cumulative and would equal $198 million in fiscal year 1994, and $220 million in fiscal year 1995.

Effective date

Effective upon the date of enactment.

Section 13561. Other Provisions Relating to Parts A and B of the Medicare Program

Present law

(a) Survey and Certification Requirements–The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. Current law could be interpreted to mean that user fees imposed pursuant to the Clinical Laboratory Improvement Act (CLIA) are prohibited. In addition, there are minor drafting errors regarding the survey and certification process.

(b) Other Technical Amendments–No provision.

Explanation of provision

(a) Survey and Certification Requirements–The provision would clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

Minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90 would be corrected. In addition, the provision would correct minor and technical errors in Sections 4201 through 4207 of OBRA 90.

(b) Other Technical Amendments–A number of minor technical amendments relating to Parts A and B of the Medicare program would be made.

Effective date

Effective on the date of enactment

Chapter 4. Medicare Supplemental Insurance Policies

Section 13571. Standards for Medicare Supplemental Insurance Policies

Present law

Section 1882 of the Social Security Act, as most recently amended by OBRA 90, provides for minimum standards for

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Medicare supplemental insurance (Medigap) policies.

(a) Preventing Duplication–The OBRA 90 amendments strengthen prohibitions against the sale of duplicative coverage to Medicare beneficiaries. The sale of a Medigap policy to an individual already covered under a Medigap policy is prohibited, as is, in general, the sale of a Medigap policy to a Medicaid beneficiary. Insurers are required to obtain written information from applicants regarding existing health insurance coverage.

****789*557** The language also appears to prohibit the sale of any health benefits that duplicate any health coverage (including Medicare) to which a Medicare beneficiary is entitled.

(b) Loss Ratios and Refund of Premiums–The OBRA 90 amendments increased the minimum loss ratio standard for individual Medigap insurance policies from 60 percent to 65 percent. The standard is 75 percent for group policies. Policy issuers are required to provide a refund or credit against future premiums if needed to meet the loss ratio requirements.

(c) Pre-existing Condition Limitations–The OBRA 90 amendments prohibit medical underwriting and certain other practices with respect to Medicare supplemental insurance policies for which an individual age 65 or older applies during the 6 month period beginning with the first month during which the individual is first enrolled for benefits under part B.

(d) Other Miscellaneous and Technical Corrections–The conference report to accompany OBRA 90 states the intent of the conferees that the National Association of Insurance Commissioners, in promulgating changes to the Model Medigap Regulations to conform with Federal requirements, would delete from section 12(C) all that follows "unless", which is an exception to limitations on certain sales commissions. The OBRA 90 amendments also include a number of minor and technical drafting errors.

Explanation of provision

(a) Preventing Duplication–This provision would continue the current law prohibition on the sale of duplicative health insurance policies subject to the conditions described in the following paragraph. The provision would clarify that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (i) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare or Medicaid; (ii) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; and, (iii) a health insurance policy, other than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits.

Policies that would be subject to the disclosure requirement include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing ****790*558** services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication would not alter in any way the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary.

(b) Loss Ratios and Refund of Premiums–The provision would clarify that the OBRA 90 loss ratio standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after the effective date. Other minor and technical drafting errors would be corrected.

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(c) Pre-existing Condition Limitations–The provision would clarify the intent of OBRA '90 that, in the case of individuals enrolled in part B prior to age 65, Medigap insurers are required to offer coverage, regardless of medical history, for a 6-month period when the individual reaches age 65. The provision would also clarify that insurers are prohibited from discriminating in the price of policies for such an individual, based upon the medical or health status of the policyholder.

(d) Other Miscellaneous and Technical Corrections–The provision would clarify that certain language should be deleted from section 12(C) of the National Association of Insurance Commissioners Model Regulations pertaining to sales commissions. The effective dates for various provisions would be modified. Other minor and technical drafting errors would be corrected.

Effective date

Effective upon the date of enactment.

Chapter 5. Treatment of Certain State Health Care Programs

Section 13581. Treatment of Certain State Health Care Programs

Present law

Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the Act supersedes any and all State laws that "relate to any employee benefit plan." Section 514(b) (2) (A) exempts from preemption State laws regulating insurance, except that States may not deem employee benefit plans to be engaged in the business of insurance for purposes of State insurance law (section 514(b) (2)).

Section 514(b) (5) generally exempts from preemption most provisions of the Hawaii Prepaid Health Care Act as it existed on September 2, 1974. State tax laws relating to employee benefit plans and amendments to the Hawaii Act adopted after that date, however, are preempted. The Secretary of Labor is authorized to enter into cooperative arrangements with the officials of the State of Hawaii to assist them in effectuating the policies of the Hawaii Act which are preempted.

****791*559** Explanation of provision

The Hawaii Prepaid Health Care Act would not be preempted by ERISA, unless the Secretary of Labor notifies the Governor of Hawaii that, as a result of any amendment to the Hawaii Act, the proportion of the population covered would be less than the current proportion or the level of coverage would be less than the actuarial equivalent of the current level of coverage. State tax laws relating to employee benefit plans would continue to be preempted.

Effective date

Effective upon the date of enactment.

SUBTITLE D–CUSTOMS AND TRADE PROVISIONS

Section 13601. Customs and Trade Agency Authorizations for Fiscal Years 1994 and 1995

Section 13601 authorizes appropriations for fiscal years 1994 and 1995 for the U.S. International Trade Commission, the U.S. Customs Service, and the Office of the U.S. Trade Representative.

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U.S. INTERNATIONAL TRADE COMMISSION

Present law

Section 330(e)(2) of the Tariff Act of 1930, as amended, authorizes 2-year appropriations for the International Trade Commission. The most recent authorizations (under section 101 of Public Law 101–382, the Customs and Trade Act of 1990) were $41,170,000 for fiscal year 1991 and $44,052,000 for fiscal year 1992. An amount not to exceed $2,500 was authorized for each of these fiscal years to be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

The total appropriation to the ITC for fiscal year 1993 (Public Law 102–395) is $44,852,000, of which an amount not to exceed $2,500 is available to be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

Explanation of provision

Section 13601(a) amends section 330(e)(2) of the Tariff Act of 1930 to provide an authorization of appropriations to the ITC of $45,416,000 for fiscal year 1994 and $45,974,000 for fiscal year 1995. Of these authorized amounts, not more than $2,500 per fiscal year may be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

Reasons for change

The fiscal year 1994 authorization is $472,000 less than the amount requested by the ITC. The ITC requested $45,888,000, an amount reflecting a 2.3 percent increase over the fiscal year 1993 appropriation of $44,852,000. The difference between the Commission's budget request and the authorization for fiscal year 1994 is attributable to the elimination of a 2.2 percent cost-of-living salary increase. This increase was eliminated in order to bring the ITC's budget request into full compliance with President Clinton's budget reduction directives for Executive agencies.

****792*560** The fiscal year 1995 authorization is $1,067,000 less than the amount requested by the ITC. This reduction reflects the elimination of a 2.0 percent cost-of-living pay increase requested for fiscal year 1995, as well as the elimination of the fiscal year 1994 pay increase and the annualization of that increase. The elimination of this pay increase brings the ITC authorization level into full compliance with the President's budget reduction directives.

The fiscal year 1994 authorization level represents an increase of 1.26 percent over the fiscal year 1993 appropriation for the ITC. The fiscal year 1995 authorization represents an increase of 1.21 percent over the fiscal year 1994 authorization level. The Commission has indicated that these increases are necessary to cover nondiscretionary increases in personnel compensation and benefits, space rental costs, and equipment replacement costs.

Effective date

Date of enactment.

U.S. CUSTOMS SERVICE

Present law

The Customs Procedural Reform and Simplification Act of 1978 (Public Law 95–110) provides for a 2-year authorization of appropriations for the U.S. Customs Service. The Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) requires that the salaries and expenses portion of the Customs Service authorization specify separate amounts for noncommercial and

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commercial operations.

The most recent authorization (section 101 of the Customs and Trade Act of 1990, Public Law 101–382) was $1,247,884,000 for fiscal year 1992 for salaries and expenses of the Customs Service. The Act authorized $150,199,000 for operations and maintenance of the Air Interdiction Program (operations and maintenance of the marine program was added to this account in 1992). The Act authorized $542,091,000 in fiscal year 1992 for noncommercial operations and $705,793,000 for commercial operations.

The fiscal year 1993 Treasury Appropriation Act (Public Law 102–393) appropriated $1,315,917,000 for Customs Service salaries and expenses and $152,016,000 for the Air Interdiction Program. Under provisions of Public Law 100–690, $12,777,000 was transferred from the Office on National Drug Control Policy for special projects in High Intensity Drug Trafficking Areas.

Thus, the total budget authority available for the current fiscal year for Customs Service salaries and expenses is $1,328,694,000 and 17,564 full-time-equivalent (FTE) positions. For the Air Interdiction Program, the total budget authority is $132,416,000. (The Appropriations Act further subdivided this into three separate accounts.)

Section 613(A) of the Tariff Act of 1930 provides for a 2-year authorization for discretionary uses of the Customs Forfeiture Fund. For fiscal year 1992, the Committee authorized $15 million for discretionary uses of the Fund. The Forfeiture Fund was transferred to the Department of the Treasury and merged into a unified Treasury-wide Fund pursuant to Public Law 102–393. This law ****793*561** provides a $50 million permanent authorization for discretionary uses of the Fund.

Explanation of provision

Section 13601(b) amends section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for the U.S. Customs Service not to exceed $540,783,000 in fiscal year 1994 and $527,000,000 in fiscal year 1995 for salaries and expenses incurred in noncommercial operations, and not less than $771,036,000 in fiscal year 1994 and $748,000,000 in fiscal year 1995 for salaries and expenses incurred in commercial operations.

For operation and maintenance of the Air and Marine Interdiction Program, $95,156,000 in fiscal year 1994 and $128,000,000 in fiscal year 1995 are authorized. These are aggregate amounts and are intended to cover the three accounts created by the Treasury Appropriations Act: (1) Operations and Maintenance Air and Marine Interdiction Programs (O&M); (2) P–3 Drug Interdiction Operations and Maintenance (P–3 O&M); and (3) Air and Marine Interdiction Procurement.

Reasons for change

The fiscal year 1994 authorization level accepts the amount requested in the President's budget submission. The total authorization amount of $1,406,975,000 and 17,199 full-time-equivalent positions represents a decrease of $54,135,000 and 365 FTEs from the current fiscal year 1993 appropriation level, net of small airports. The net decrease in budget authority is approximately 1.2 percent because of the carryover of $37 million in fiscal year 1993 unobligated balance from the Air and Marine Interdiction Program and the transfer of the Customs Forfeiture Fund to the Treasury Department.

The Customs budget proposal is affected by, and implements, two Executive orders issued by the President directing a reduction in Federal Government agency spending and personnel:

(1) Executive Order on Administrative Cost Reduction (12387)...–$8,490,00/0 FTE Pos., requiring agencies reduce administrative costs by not less than 14 percent between 1994 and 1997. This is to be achieved by annual reductions of 3 percent to the fiscal year 1993 amount, adjusted for inflation.

(2) Executive Order on Personnel Reduction (12389)...–$14,270,000/–265 FTE Pos., requiring that each executive department with over 100 employees achieve at least a 4 percent reduction in positions (measured on an FTE basis), in decrements of one percent in fiscal year 1993, 1.5 percent in fiscal year 1994 and 1.5 percent in fiscal year 1995. The one percent reduction in fiscal year 1993 cut 177 FTEs.

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The cumulative effect of reductions, nonrecurring expenses, and savings result in a net decrease of 365 FTE positions from the fiscal year 1993 adjusted level of 17,564 FTE positions.

The only new program initiative requested in the budget is $2.5 million earmarked to update and redesign the Automated Commercial System (ACS) Revenue Collection System. This system is now over 10 years old and improvements are needed to better track revenue ****794*562** collections. No funding for a pay raise in fiscal year 1994 is requested.

On the enforcement side, no new drug interdiction initiatives are proposed and funding for Operations, Maintenance and Procurement of Air and Marine Interdiction maintains current levels of service. The proposal of $95 million in new spending authority in fiscal year 1994 reflects the recapture of $37 million in prior year unobligated balances. For the Treasury Forfeiture Fund, the Administration is proposing funding of $14.7 million.

While section 13601(b) does not contain an authorization for forfeiture activities, the Committee intends to continue its oversight and legislative activities with respect to the customs portion and funding of the new Treasury Fund. The new Fund was created as part of the Treasury, Postal Service and General Government Appropriations Act of 1993 (Public Law 102–338), without any formal review by the Committee on Ways and Means. On October 2, 1992, Chairman Rostenkowski wrote to House Speaker Foley notifying him of the Committee's intention to continue its jurisdictional prerogatives over Customs's forfeiture activities and financing.

The fiscal year 1995 authorization is based on extending the fiscal year 1994 figures for each account, after adjusting for (1) increases necessary to maintain current levels, (2) the next installment of the President's Executive orders on administrative cost and personnel reductions, and (3) the assumption of no government-wide pay raise in fiscal year 1995. Therefore, the Committee recommendation for fiscal year 1995 is consistent with the President's proposed budget.

The Committee is concerned that appropriation restrictions unduly limit Customs' flexibility to increase or adjust resources to meet growing workloads. As a result, certain ports experiencing rapid growth are unable to meet demand for customs services. The situation in south Florida is one example where more inspectional resources are required while other ports are overstaffed.

Finally, the current prohibition on studying the reorganization of Customs' regions and districts prevents efficient and effective management of government resources.

Effective date

Date of enactment.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Present law

Section 141(g)(1) of the Trade Act of 1974, as amended, authorizes 2-year appropriations to carry out the functions of the Office of the U.S. Trade Representative. The most recent authorizations (under section 103 of the Customs and Trade Act of 1990) were $23,250,000 for fiscal year 1991 and $21,077,000 for fiscal year 1992. These annual amounts included not to exceed $98,000 for entertainment and representation expenses, not to exceed $2,050,000 for the U.S. share of expenses for binational panels and extraordinary challenge committees convened under Chapter 19 of the U.S.-Canada Free Trade Agreement, and not to exceed $1,000,000 in funds to remain available until expended.

****795*563** The total appropriation to the USTR for fiscal year 1993 (Public Law 102–395) is $19,992,000, of which not to exceed $98,000 is available for official reception and entertainment expenses and not to exceed $2,500,000 shall remain available until expended.

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Explanation of provision

Section 13601(c) amends section 141(g)(1) of the Trade Act of 1974 to provide a 2-year authorization of appropriations to the USTR of $20,143,000 in fiscal year 1994 and $20,419,000 in fiscal year 1995. Of these amounts in each year, not to exceed $98,000 may be used for entertainment and representation expenses and not to exceed $2,500,000 shall remain available until expended.

Reasons for change

The current fiscal year 1993 appropriation of $19,992,000 represented a reduction of $408,000 from the appropriation level in fiscal year 1992 ($20,400,000), and about a $1.7 million reduction from the fiscal year 1993 authorization request for current services plus two additional positions. The USTR is implementing a budget management plan to reduce costs by about $1.7 million in fiscal year 1993. However, in order to cover unanticipated costs primarily to negotiate supplemental agreements to the North American Free Trade Agreement (NAFTA) and to continue the Uruguay Round of GATT multilateral trade negotiations, the USTR is requesting a supplemental appropriation for fiscal year 1993 of $750,000, providing a total fiscal year 1993 appropriation of $20,742,000.

The fiscal year 1994 authorization request of $20,143,000 represents a net increase of $151,000 or 0.8 percent from the current $19,992,000 fiscal year 1993 appropriation level. The $151,000 net increase is derived from an OMB formula applied to the current fiscal year 1993 appropriation level that includes a 3 percent across-the-board inflation factor (but no general pay raise), partially offset by about a 3 percent reduction in administrative expenses (nonpersonnel, nonequipment costs) to meet the President's 14 percent reduction in such expenses by 1997, plus savings from personnel reductions. About two-thirds of the USTR total budget consists of personnel salaries and benefits.

The total authorization request for fiscal year 1995 is $20,419,000, an increase of $276,000 or 1.3 percent from the fiscal year 1994 request level, calculated on the basis of the OMB formula.

Full-time equivalent (FTE) positions would be reduced from 160 in fiscal year 1992 and 162 in fiscal year 1993 to 157 in fiscal year 1994. An anticipated further reduction to 156 FTE positions in fiscal year 1995 would comply with the President's personnel program for the agency. In addition, professional USTR staff currently includes 41 details assigned from other agencies, of which all but two are nonreimbursable.

The USTR budget requests for fiscal year 1994 and 1995 comply with the President's guidelines for reductions in administrative costs and personnel. The requests represent a modest increase in current funding for the agency which has the primary responsibility for developing, coordinating, and articulating U.S. international trade policy, advising the President on trade policy and issues, and ****796*564** for conducting international trade negotiations. The Committee believes that the requests are fully justified by the essential statutory functions of this agency and the full agenda of international trade policy issues and negotiations.

Effective date

Date of enactment.

Section 13602. Extension of Authority to Levy Customs User Fees

Present law

Section 13031 of the Consolidated Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c) authorizes the U.S. Customs Service to collect user fees for services the agency provides to the traveling and importing public. A statutory schedule of flat rate fees is imposed for the processing of air and sea passengers, commercial vessels, barges, rail cars, trucks, dutiable mail packages and customs brokers permits ("COBRA fees"). Fees collected reimburse appropriations for the costs incurred by Customs in providing inspectional overtime and excess preclearance costs. Also, expenditures are authorized

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from surplus revenues in excess of $30 million to add new positions and acquire equipment to enhance services provided to the payers of the fees.

Customs also collects a 0.19 percent ad valorem merchandise processing fee (MPF) on the value of formally entered imported commercial cargo, subject to a $21 minimum and $400 maximum fee. In addition, a $2, $5, and $8 entry fee is charged for processing informal entries valued below $1,250.

Merchandise that qualifies for entry as a product of a Caribbean Basin Initiative (CBI) country, a Least Developed Developing Country (LDDC), an insular possession, or as a product classified under chapter 98 of the Harmonized Tariff Schedule (HTS) is exempt from the fee. In addition, beginning on January 1, 1994, the MPF will not apply to goods qualifying as Canadian. Meanwhile, the MPF for Canadian goods, which is being eliminated in stages under the U.S.-Canada Free Trade Agreement, is currently 20 percent of the rate applicable to goods from other sources.

Receipts from the MPF are deposited into a "Customs User Fee Account" within the general fund and, subject to authorization and appropriation, offset Customs costs incurred in commercial operations.

User fee collections are scored as receipts which offset direct spending. In fiscal year 1992 (the last year data is available), Customs collected $176 million in COBRA fees and $494 million from the MPF. Projected MPF collections for fiscal year 1994 are $500 million although Customs commercial costs are estimated at $770 million. This results in a $270 million shortfall.

All user fee authority expires September 30, 1995.

Explanation of provision

Section 13602 amends section 13031(j)(3) of the COBRA to extend all customs user fee authority (both COBRA fees and MPF) for three additional fiscal years through fiscal year 1998.

****797*565** Reasons for change

Although the President's Economic Plan proposes to make all user fee authority permanent, the Committee believes that a 3-year extension with a sunset date of September 30, 1998, is more appropriate and follows the 5-year Clinton budget horizon. This extension would comply with the reconciliation instructions to the Committee.

Effective date

Date of enactment.

Section 13603. Generalized System of Preferences

Present law

Title V of the Trade Act of 1974, as amended, authorizes the President to grant preferential duty-free treatment (Generalized System of Preferences) on imports of eligible articles from designated beneficiary developing countries, subject to certain conditions and limitations. Section 502(b) includes the "Union of Soviet Socialist Republics," and thus its successor independent republics, on a specific list of countries which the President is prohibited from designating as eligible for beneficiary country status under the GSP program.

Section 505(a) of the Trade Act of 1974 provides that no duty-free treatment under Title V shall remain in effect after July 4, 1993.

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Explanation of provision

Section 13603(a) amends section 502(b) of the Trade Act of 1994 to remove the "Union of Soviet Socialist Republics" from the statutory list of countries prohibited from designation for beneficiary status under the GSP program.

Section 13603(b) amends section 505(a) of the Trade Act of 1974 to authorize a short-term extension of GSP duty-free treatment through September 30, 1994. Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry (including withdrawal from warehouse for consumption) of any article made after July 4, 1993, and before date of enactment of the extension to which GSP duty-free treatment would have applied shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer within 180 days after the date of enactment.

Reasons for change

The amendments reflect a legislative proposal transmitted by the USTR on behalf of the President to the Speaker of the House on April 27, 1993.

The U.S. GSP program was implemented on January 1, 1976, pursuant to the statutory authority enacted under the Trade Act of 1974, for an initial 10-year period and renewed until July 4, 1993 by the Trade and Tariff Act of 1984. The program currently provides duty-free treatment on imports valued at about $16.7 billion from about 150 designated developing countries and territories. ****798*566** Other major developed countries also maintain generalized tariff preference programs.

The amendment of section 502(b) removes the prohibition on the eligibility of the 14 independent republics of the former Soviet Union for duty-free treatment under the GSP program. Actual designation by the President of any of the former Soviet republics would be subject to the statutory mandatory conditions and the factors which the President must take into account under section 502(b) and (c) of the 1974 Act. An identical provision was included in H.R. 11, the "Revenue Act of 1992," as passed by the 102nd Congress.

Testimony received by the Committee indicates strong support in the U.S. business community for a short-term GSP extension. The program fosters economic development and thereby overseas markets for U.S. exports, provides leverage to reduce trade barriers and enhance intellectual property right protections in developing countries, and lowers input costs for U.S. manufacturers. The retroactive provision ensures domestic producers and importers that duty-free treatment on eligible articles will not lapse in the event that extension legislation cannot be enacted prior to July 4.

The limited time available prior to the expiration of the program on July 4 does not permit a comprehensive review of the operation of the program. The Committee intends to use the short-term extension period to conduct a thorough review of the program and to consider possible legislative and administrative changes to improve its operation. The Administration has indicated its intention to work with the Congress during the 15-month extension period to develop a proposal for long-term renewal of the GSP program.

The Committee is concerned that GSP benefits continue to be granted to beneficiary developing countries despite complaints from U.S. exporters about beneficiary developing country practices which clearly place U.S. goods at a competitive disadvantage. In particular, the Committee is concerned about complaints alleging that beneficiary developing countries are affording preferential treatment to the products of a country other than the United States or countries are not providing equitable and reasonable access to their markets for U.S. goods despite the statutory limitations on granting GSP treatment in such circumstances.

The Committee therefore expects the President to report to the Committee on Ways and Means, prior to requesting any further extension of the program, on the number and extent of reviews of beneficiary developing country status that have been conducted on the basis of these discriminatory practices, the length of time taken to make determinations, the findings, and whether beneficiary status has been withdrawn or suspended from beneficiary countries as a result of their maintenance of such practices. The Committee also expects the President to evaluate, based on private sector information as well as independent investigation by USTR, the extent and nature of preferential treatment by GSP beneficiaries and which countries engage extensively in such practices.

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The Committee notes the particular importance of programs like the GSP program for the Republic of Haiti, the poorest country in our hemisphere with a per capita GNP of only $370. Because of the political turmoil in that country, and the resulting economic embargo, ****799*567** the Haitian economy has declined significantly and the Haitian people are suffering severe hardship.

At a point when the ongoing negotiations to restore Haiti's democratically-elected government are successful, the United States must explore ways to bring economic activity back to Haiti and restore growth and jobs to this fragile country. The GSP program provides important economic support for the least developing countries and is an invaluable tool in creating jobs. However, the benefits to Haiti have fallen from $35 million in 1990 to $9.6 million in 1992 because of the political instability there.

The Committee intends, at an appropriate time when the political crisis is resolved and a democratic form of government reinstated, that the GSP program as it applies to Haiti be reviewed with the intent of quickly restoring the benefits of that program to preembargo levels. The Committee also will review ways to improve the GSP program for Haiti in order to enhance economic development, create employment opportunities, and solidify support for democratic principles and institutions.

Effective date

Date of enactment, with duty-free treatment available retroactively to July 4, 1993.

Section 13604. Extension of, and Authorization of Appropriations for, the Worker Trade Adjustment Assistance Program

Present law

The Trade Adjustment Assistance program authorized under chapter 2 of Title II of the Trade Act of 1974, as amended, entitles eligible workers certified by the Department of Labor as adversely affected by increased imports to benefits in the form of weekly cash payments, training and other employment services, and job search and relocation allowances, subject to certain qualifying requirements and limitations.

Section 245 of the Act authorizes appropriations of such sums as may be necessary for the program through fiscal year 1993. Section 285(b) of the Act provides that no assistance, vouchers, allowances, or other payments may be provided under the TAA program for workers after September 30, 1993.

Explanation of provision

Section 13604(a) amends section 285(b) of the Trade Act of 1974 to extend the termination date for the TAA program for workers for three years through September 30, 1996. Section 13604(b) amends section 245 of the Act to authorize appropriations of such sums as may be necessary for the worker TAA program for fiscal years 1994, 1995, and 1996.

Reasons for change

Section 13604 reflects an Administration legislative proposal transmitted to the Committee on April 28, 1993, to extend the TAA program for workers, which is due to expire September 30, 1993, for three years, through September 30, 1996. The Administration ****800*568** intends this extension to be a transition period. This year, the Administration will propose a new, comprehensive program to address the needs of all dislocated workers irrespective of the cause of such dislocation. During the next three fiscal years the Administration intends that the TAA program will be phased into the new program.

The extension ensures that the entitlement program which has served workers adversely impacted by increased imports since its inception in 1962 will remain in place pending development, Congressional consideration, and possible enactment and

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implementation of the new, comprehensive program.

Effective date

Date of enactment.

Section 13605. Extension of Uruguay Round Trade Agreement Negotiation and Proclamation Authority and of "Fast Track" Procedures to Implementing Legislation

Present law

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries and to proclaim tariff modifications (subject to limitations) he determines to be required or appropriate to carry out such agreements. Section 1102(b) of the Act authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries to reduce, eliminate, prohibit, or limit nontariff barriers.

Section 1103(a)(1) of the 1988 Act provides that agreements entered into under section 1102(b) shall enter into force only if the President notifies the House and Senate at least 90 calendar days in advance of his intention to enter into the agreement (for purposes of consultations required with committees of jurisdiction under subsection (c)) and, after entering into the agreement, the President submits to the House and Senate a copy of the final legal text, a draft implementing bill and statement of any proposed administrative action, and supporting information, and the implementing bill is enacted into law. Section 1103(b) provides that the "fast track" procedures under section 151 of the Trade Act of 1974 apply to implementing bills submitted with respect to trade agreements entered into before June 1, 1991 (extended until June 1, 1993, through operation of provisions of section 1103(b)). Under these procedures, implementing (revenue) bills, upon submission by the President and introduction on the same day by the leadership of the House and Senate, are subject to a maximum 90-legislative-day period for Congressional consideration (60 days in the House), without amendment.

Section 135(e) of the Trade Act of 1974, as amended, requires the Advisory Committee for Trade Policy and Negotiations and appropriate private sector policy, functional or sectoral advisory committees to report to the President, the Congress, and the USTR on each trade agreement entered into under section 1102 of the 1988 Act not later than the date the President notifies the Congress of his intention to enter into the agreement.

****801*569** Explanation of provision

Section 13605 amends section 1102 of the Omnibus Trade and Competitiveness Act of 1988 by adding a new subsection (e) that–

(1) Authorizes the President to enter into trade agreements under sections 1102 (a) and (b) after May 31, 1993, and before April 16, 1994, resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), if these negotiations have not resulted in agreements by May 31, 1993;

(2) Provides that no proclamation under section 1102(a) to carry out provisions of an Uruguay Round trade agreement regarding tariffs may take effect before enactment of legislation that implements the provisions of the agreement on nontariff barriers;

(3) Requires the President to provide the House and Senate under section 1103(a)(1)(A) of the Act at least 120 days advance notice of his intention to enter into the trade agreement, but not later than December 15, 1993; and extends the application of "fast track" procedures to implementing bills submitted with respect to such an agreement entered into before April 16, 1994; and

(4) Requires the reports by private sector advisory committees under section 135 of the Trade Act of 1974 not later than 30 days after the President notifies the Congress, but before January 15, 1994.

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Reasons for change

On April 9, 1993, the White House announced the President's decision to seek legislation to extend Congressional "fast track" procedures to an implementing bill for the Uruguay Round of GATT multilateral trade negotiations in order to enable these negotiations to be completed this year. The amendments reflect the legislative proposal transmitted by the USTR on behalf of the President to the Speaker of the House on April 27 for this purpose.

The current negotiating authority and fast track implementing procedures provided under the 1988 Act may not be used to conclude the Uruguay Round negotiations because those provisions required the President to notify the Congress by March 2, 1993, of his intent to enter into agreements before June 1, 1993. Since the negotiations have not been concluded and no notice was made by March 2, the current authority was not used.

The amendments would extend trade agreement negotiating authority for 10½ months and would provide a minimum of 120 days for review of the agreement and consultation on draft implementing legislation with Congressional committees of jurisdiction prior to formal submission under "fast track" approval procedures. The authority would not be available for any trade agreement other than the results of the Uruguay Round. Those negotiations among more than 100 nations began in 1986 to reduce tariff and nontariff barriers and to establish new and improved international trading rules for manufactured goods, agricultural products, services, intellectual property, and investment. Extension of the U.S. trade agreement authority and "fast track" implementing procedures is ****802*570** essential to permit completion of these important negotiations this year.

In order to achieve free and open trade, consistent with the principles of the GATT, the Committee believes that a more equitable world trade order for textiles and apparel should be established in the Uruguay Round negotiations emphasizing fairness and strengthening of GATT rules and disciplines as they apply to textiles and apparel trade. The Committee believes that any agreement submitted for its consideration should ensure that all countries provide equitable access to their domestic textile and apparel markets; and take measures to prevent intellectual property piracy and the circumvention of trade rules, including transshipment, false declarations and smuggling. The agreement should also address trade-distorting practices employed by nonmarket economies, as well as the need to achieve minimum acceptable standards safeguarding the environment and prohibiting the export of goods produced with child or forced labor. Finally, the Committee believes that the liberalization of textile and apparel quotas which would result from phasing out the Multifiber Arrangement constitutes a significant contribution toward achieving free and open trade, and that any proposed reductions in textile and apparel tariffs should be considered in this context in order to meet the standards of reciprocity and fairness.

Although not included in the legislation at this time, the Committee recognizes that bilateral negotiating authority is an important complement to multilateral efforts such as the Uruguay Round. Bilateral negotiations serve as an invaluable tool in opening markets abroad and, without it, our ability to respond effectively to trade problems and export opportunities is diminished.

First, bilateral authority gives continuity to trade policies that gave us two successful free trade areas (FTA)–the FTA with Israel and the U.S.-Canada FTA. If other countries step forward with a desire to play by the rules and to compete on an equal footing, including strong intellectual property rights protection, strong rules of origin, effective standards, reduced restrictions on services and investment, and elimination of trade preferences and tariffs–then the United States should be ready to negotiate bilateral, regional, or multilateral arrangements with them.

The pursuit of bilateral agreements also sends a strong signal to the multilateral process that the United States will not allow its own economic interests to be undermined by a lack of progress on the multilateral front. Progress in the Uruguay Round has ebbed and flowed over the past six years, and the United States should have the ability to pursue its interests through other arrangements. Bilateral authority also can be used to respond to individual bilateral trade problems, whether sectoral or structural.

The Administration has proposed limited authority at this time as an urgent request given the critical importance of the Uruguay Round, the advanced stage of those negotiations, and the belief that they can be completed within the proposed time frame. The Administration has assured the Committee that it recognizes the importance of bilateral negotiations that have been considered and discussed with many of our trading partners, and the need for authority to pursue those negotiations. The

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Administration has also ****803*571** indicated that it is prepared to work with the Committee and the Congress in developing broader authority to pursue further trade agreements as a high priority.

Effective date

Date of enactment.

Section 13606. Repeal of East-West Trade Statistics Monitoring System

Present law

Section 410 of the Trade Act of 1974, as amended (19 U.S.C. 2440) established the East-West Trade Statistics Monitoring System. It requires the International Trade Commission to monitor U.S. imports from, and exports to, nonmarket economy countries. Such data must be published and transmitted to Congress each quarter.

Explanation of provision

Section 13606 repeals section 410 of the Trade Act of 1974.

Reasons for change

An identical provision was included in H.R. 11, the "Revenue Act of 1992," passed by the 102nd Congress. The Committee believes that repeal of section 410 is warranted due to the substantial political and economic transformation of regimes of the former East Bloc and the need to focus limited ITC resources on other areas. The reporting requirement was enacted as part of Title IV, along with the Jackson-Vanik amendment, which authorized the President to extend most-favored-nation status to nonmarket economy countries, subject to certain conditions. After 19 years' experience with the Jackson-Vanik amendment, a quarterly reporting requirement on "nonmarket economy countries" would appear to be unnecessary and outdated. In addition, repeal of the reporting requirement would free ITC staff resources for other purposes and reduce printing and distribution costs. (More than 1,000 copies are printed and mailed.)

Repeal of the requirement to submit a report to the Congress each quarter does not mean that data on trade with the former East Bloc countries will cease to be collected. That data will continue to be collected by the U.S. Census Bureau and the ITC and can be readily obtained by Members of Congress and the public.

***572** In addition to the report on East-West trade, the Committee is aware that the ITC publishes and distributes a number of studies on its own initiative. In the interest of reducing the cost and burden of recurring reports, the Committee urges the Commission to review carefully the need for all reports. Reports which, in the opinion of the Commission, have outlived their usefulness or which are read only by a few individuals should be eliminated wherever possible. Other reports should be streamlined wherever possible. ****804** The Commission has recently formed a task force to address this issue.

Effective date

Date of enactment.

SUBTITLE E–CUSTOMS OFFICER PAY REFORM

Section 13701. Overtime and Premium Pay for Customs Officers

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Present law

Customs inspectors are compensated with overtime pay for work performed outside the statutorily-defined work week (i.e., Monday through Saturday, 8:00 a.m. through 5:00 p.m.). Overtime pay is paid at a rate of two times basic pay, with any amount of work conducted during a 2-hour period treated as 4 hours pay (2 hour minimum at a rate of two times basic pay).

Customs inspectors who are required to work after their normal duty (callback), between 5:00 p.m. and 9:00 p.m., are paid overtime beginning at 5:00 p.m. and for hours actually worked, at a rate of two times basic pay. Customs inspectors who are required to work after their normal duty (callback), between 9:00 p.m. and 6:00 a.m., are paid for 8 hours (4 minimum hours at a rate of two times basic pay), plus hours actually worked of at least 4 hours (2 minimum hours at a rate of two times basic pay), for a total of 12 hours pay for any time worked.

There is no separate provision in present law to compensate Customs inspectors for a second commute due to callback.

Customs inspectors are compensated with overtime pay for work performed at night and on Sundays and holidays, plus certain minimum hour credits, at a rate of two times basic pay. At night (after 5:00 p.m. and before 8:00 a.m.), Customs inspectors are compensated with 4 hours pay (2 hours minimum at a rate of two times basic pay) for any time worked. On Sundays, Customs inspectors are compensated with 16 hours pay (8 hours minimum at a rate of two time basic pay) for any time worked. On holidays, Customs inspectors are compensated with 16 hours pay (as on a Sunday) plus basic pay for any time worked.

Customs inspectors may receive up to $25,000 in overtime pay, annually.

Customs Canine Enforcement Officers are provided overtime compensation in the same manner as other Federal employees under the Federal Employee Pay Act (FEPA).

There is no separate provision in present law authorizing the Secretary of the Treasury to promulgate overtime regulations.

***573** Explanation of provision

Customs officers would be defined as any individual performing those functions specified by regulation by the Secretary of the Treasury for a Customs inspector or Canine Enforcement Officer.

****805** Customs officers would be compensated with overtime pay for work performed in excess of a 40-hour week or 8-hour day, at a rate of two times basic pay, for actual time worked.

Customs officers who must return to their place of work (callback) beyond their normal duty, where the work begins more than 1 hour after their duty ends or before their next duty begins, would be paid 4 hours pay (2 minimum hours at a rate of two times basic pay), plus hours actually worked beyond 2 hours (at a rate of two times basic pay).

In addition to callback pay, Customs officers would be paid 3 hours (at the basic pay rate) as compensation for travel time. Compensation is not payable if the work does not begin within 16 hours of the last assignment, or if it starts within 2 hours of the next assignment.

Customs officers would be provided additional compensation (15 percent of basic pay) where a majority of the work is performed at night (between 3:00 p.m. and midnight) and additional compensation (20 percent of basic pay) where a majority of the work is performed at night (between 11:00 p.m. and 8:00 a.m.), where the night work is performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of time and one-half basic pay) for work performed on Sunday, where the Sunday work was performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of two times basic pay) for work on a holiday.

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The newly created premium pay for work performed at night, Sundays, and holidays, and compensation received for any second commute would be subject to the annual $25,000 overtime pay limitation. Also, the annual overtime pay limitation would be made a part of the same law that controls payment of inspectional overtime.

The Secretary of the Treasury would be authorized to promulgate regulations to insure that callback assignments are commensurate with the overtime compensation authorized for such work and to prevent the disproportionate assignment of overtime work to Customs officers near retirement.

The Committee's purpose in requiring Customs officials to work 40 hours in a week or 8 hours in a day, without regard to the hour of the day or the day of the week before they qualify for overtime pay, is to encourage Customs to adjust its inspectional resources to meet actual trade patterns, rather than the trade community being forced to adjust to a predetermined Customs workday. Also, Customs should measure workload and trade patterns at each of its ports and then adjust work schedules to meet that demand while using as little overtime as possible. Particular attention should be given to minimizing callback assignments.

Finally, the Committee recognizes the adverse impact on the quality of life of Customs officials who are required to work regularly scheduled shifts at night or on Sundays and holidays. Accordingly, ***574** the bill provides for shift differential compensation at levels substantially greater than applied generally to other Federal employees for such regularly scheduled work. Also, the Committee intends ****806** that Customs management take steps to insure that Customs officials are only compensated for overtime for the actual time that they work, except when required to work a callback as described above. The Committee intends that Customs officials will be compensated for actual time worked at only one of the following rates for any given tour of duty: (1) basic pay rates as prescribed in Title 5 of the United States Code; (2) premium pay rates as prescribed in this bill; or, (3) overtime pay rates as prescribed in this bill. The Committee does not intend that these rates be additive.

Effective date

October 1, 1993.

Section 13702. Foreign Language Proficiency Awards for Customs Officers

Present law

There is currently no law authorizing Foreign Language Proficiency Awards for Customs inspectors.

Explanation of provision

The Secretary of the Treasury would be authorized to pay up to 5 percent of basic pay to any Customs officer who possesses and makes substantial use of one or more foreign languages in the performance of official duties.

The Committee recognizes that many individuals whom Customs officials encounter on a daily basis do not speak English proficiently. This is true at most southern border ports as well as major gateway airports such as the John F. Kennedy International Airport in New York, the San Francisco International Airport, the Los Angeles International Airport, Houston Intercontinental Airport, and the Miami International Airport. The Committee intends that this provision enable Customs to recruit and retain Customs officials who are proficient in the foreign languages needed to communicate clearly with arriving passengers and others who must conduct business with Customs.

Effective date

October 1, 1993.

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Section 13703. Appropriations Reimbursements From the Customs User Fee Account

Present law

A schedule of Customs COBRA User Fees are authorized to be collected on various conveyances and air passengers and are paid into a dedicated Customs User Fee Account. The fees are used to pay the costs of inspectional overtime, preclearance operations, additional officers, and equipment. The Customs COBRA User Fee Account is not subject to annual authorization and appropriation. Spending for inspectional overtime and preclearance operations are not subject to Office of Management and Budget apportionment authority. ****807*575** Spending for existing premium pay is funded from the Salaries and Expenses appropriations.

Explanation of provision

The Secretary of the Treasury would be authorized to use the Customs COBRA User Fee Account, in addition to present law purposes, for a portion of Customs officer premium pay and for Customs retirement-fund contributions for Customs officer overtime pay. The Customs COBRA User Fee Account would continue to be available without the annual authorization and appropriation process. However, it would be subject to Office of Management and Budget apportionment.

Funds in the Customs COBRA User Fee Account would only be used to pay that portion of premium pay not currently authorized under the Federal Employees Pay Act. The Committee intends that the portion of premium pay that would be authorized under current law and currently paid from the annual appropriated salaries and expenses account would continue to be paid from that account. Only the difference between the additional premium pay which would be authorized by this bill and the premium pay currently authorized by FEPA would be paid from the COBRA User Fee Account.

The Committee adopted the provisions in the Administration's fiscal year 1994 budget proposal applying overtime savings to deficit reduction. Those savings would be calculated annually, and the amount of the savings would be transferred from the COBRA User Fee Account to the General Fund of the Treasury. Not more than $18 million could be transferred from the COBRA User Fee Account to the General Fund annually.

The Committee intends that funds in the Customs COBRA User Fee Account be applied in the following order: to satisfy the need for inspectional overtime; to deficit reduction; to inspectional premium pay; to agency contributions to retirement funds for inspectional overtime pay; to preclearance operations, to satisfy the annual set-aside requirement; and finally to acquire additional officers or equipment.

Effective date

October 1, 1993.

Section 13704. Treatment of Certain Pay of Customs Officers for Retirement Purposes

Present law

Customs inspector overtime pay is not treated as compensation for Federal retirement benefit purposes when calculating employee retirement annuities.

Explanation of provision

Overtime pay would be included when calculating retirement annuities for Customs officers, up to an amount equal to 50 percent of the overtime pay cap. Fifty percent of the current overtime pay cap is $12,500.

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****808*576** The Committee intends that, if the overtime pay cap is changed in the future, the amount of overtime that can be used in calculating retirement annuities will, by operation of this provision, be changed proportionately. Also, the Committee recognizes that this provision may result in increasing the Federal deficit in future years. While the retirement changes authorized under this provision are estimated to have no net effect on direct spending over the 5-year "pay go" period, the projected growth in additional direct spending from the Civil Service Retirement Fund will begin to outpace the additional Customs employee and agency contributions soon thereafter, which needs to be addressed.

Effective date

On enactment.

Section 13705. Reports

Present law

The Secretary of the Treasury is required to annually report to the Congress on expenditures for additional officers and additional equipment from the Customs COBRA User Fee Account.

Explanation of provision

The Secretary of the Treasury would be required, at the end of each fiscal year, to report to the Committee on all Customs COBRA User Fee Account expenditures including overtime expenditures and de minimis callback assignments. The Secretary would also be required to submit proposals for improvements to the user fee laws used to finance inspectional services. The Comptroller General would be required, within one year after date of enactment, to review user fees used to finance inspectional services and identify additional cost savings.

The Committee believes that there may be a need for additional budgetary controls on expenditures for overtime expenses from the Customs COBRA User Fee Account. The Subcommittee on Oversight considered establishing such controls by submitting such expenditures to the authorization and appropriations process. The Committee intends for the Treasury report to address whether the Customs COBRA User Fee Account should be subject to the authorization and appropriation process. Also, the Committee believes that the current structure of the Customs user fee laws used to finance inspectional services may need improvement. While the Customs COBRA User Fee Account receipts are primarily derived from air passengers, these funds are not all used for air passenger inspectional services. For example, the Customs COBRA User Fee Account pays for overtime expenses for processing cargo at seaports and other inspectional activities outside airports. Further, appropriated salaries and expenses funds are currently used to finance the majority of full and part-time air passenger officers. The Committee intends for the Treasury report to address whether all activities relating to air passenger processing should be consolidated under the Customs COBRA User Fee Account. In addition, under the current law, the Secretary has the authority to adjust the merchandise processing fee, within established limits, in order to reflect ****809*577** changes in economic activity and enacted appropriations levels. The Committee intends for the Treasury report to address whether the Secretary should have similar authority for these user fees.

Effective date

On enactment.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 14, 1993.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.
Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed revised cost estimate for Title XIII of the

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Reconciliation recommendations of the Committee on Ways and Means, as transmitted to the House Committee on the Budget, May 14, 1993.

This revised estimate shows a revenue loss resulting from the provision involving the generalized system of preferences. The original estimate incorrectly displayed a revenue gain.

The estimates included in the attached table represent the 1994–1998 effects on the federal budget and on the budget resolution baseline of the Committee's legislative proposals affecting spending. CBO understands that the Committee on the Budget will be responsible for interpreting how savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Paul Cullinan, Lori Housman, Julie Isaacs, and Cory Oltman, who can be reached at 226–2820.

Sincerely,

Robert D. Reischauer,
Director.

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****824*593** TITLE XIV–COMMITTEE ON WAYS AND MEANS–REVENUE

EXPLANATION OF TITLE XIV–REVENUE PROVISIONS

I. TRAINING AND INVESTMENT PROVISIONS

A. EDUCATION AND TRAINING PROVISIONS

1. Permanent extension of employer-provided educational assistance (sec. 14101 of the bill and sec. 127 of the Code)

PRESENT LAW

Employer-provided educational assistance

Prior to July 1, 1992, an employee's gross income and wages for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements (sec. 127). This exclusion, which expired with respect to amounts paid after June 30, 1992, was limited to $5,250 of educational assistance with respect to an individual during a calendar year. Education that did not qualify for the exclusion (e.g., because it exceeded the $5,250 limit) was excludable from income if and only if it qualified as a working condition fringe benefit (sec. 132). To be excluded as a working condition fringe, the cost of the education must have been a job-related deductible expense.

In the absence of the exclusion, for purposes of income and employment taxes, an employee generally is required to include in income and wages the value of educational assistance provided by the employer unless the cost of such assistance qualifies as a deductible job-related expense of the employee.

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Refunds of overpayments of income and employment taxes

To obtain a refund of an overpayment of income taxes, a taxpayer may file an amended income tax return.

Under Internal Revenue Service (IRS) regulations, an employer and employee can agree that the employer will refund to the employee any excess employment taxes. An employer may obtain a refund of an overpayment of employment taxes if it certifies to the IRS that it has already returned all of the affected employees' excess employment taxes to them. If the employer cannot afford to return the overpayments to the employees unless it receives a refund, the employer may obtain a refund if it certifies to the IRS that the employees have provided it with written statements that they will not seek refunds directly. In the case of former employees who cannot ****825*594** be located, the employer may obtain a refund of an overpayment of employment taxes if it certifies to the IRS that it has tried unsuccessfully to notify them of the overpayment (in which case the employer can be refunded only the employer's share of the overpayment of employment taxes).

If the employer does not make a refund to the employee, then the employee can theoretically get a refund directly from the IRS, although the IRS has no formal procedures established for paying such refunds.

REASONS FOR CHANGE

The exclusion from income for employer-provided educational assistance programs has two intended purposes: (1) to increase the levels of education and training in the workforce and (2) to eliminate the potential complexity of determining whether education and training benefits provided by an employer constitute job-related expenses that are deductible by the employee as a working condition fringe benefit.

The committee believes that some of the benefits attributable to the exclusion for employer-provided educational assistance accrue to society at large by creating a better-educated workforce. Also, the committee believes that some individuals would underinvest in education if the Federal government did not subsidize the cost of their continuing education.

The exclusion for employer-provided educational assistance has expired and been extended several times. This practice creates uncertainty for employers and employees in determining proper withholding and tax liability during any time the availability of the exclusion has lapsed. Such uncertainty was particularly acute with respect to the most recent expiration of the exclusion because the exclusion was not extended before the end of the 1992 taxable year. In the absence of the exclusion, employers and employees should have been treating some educational assistance as taxable income (depending on whether the education was job-related). Some employers and employees did not do so, however, on the assumption that the exclusion would be extended retroactively. The committee does not wish to encourage taxpayers to take positions based upon the assumption that the law in effect at a particular time will change as the taxpayer desires. The expectation of retroactively extending the exclusion is a special circumstance, however, and it was not unreasonable in this case to expect Congress to once again extend the exclusion and to take into account the period of 1992 for which the exclusion was not in effect. Thus, the committee believes it is appropriate to waive penalties with respect to persons who treated educational assistance as nontaxable.

Some employers and employees did follow the law in effect at the time and treated educational assistance provided during the last half of 1992 as taxable. In those cases, excess income taxes and employment taxes were paid. The committee does not wish to place taxpayers who complied with the law at a disadvantage, and therefore believes it appropriate to provide a more administrable way of recovering excess taxes than filing claims for refund. Thus, the option to permit an employer to offset a similar amount of wages for 1993 is provided.

****826*595** Because of the importance of having a well-trained workforce and because of the administrative problems created by allowing the exclusion to expire, the committee believes it is appropriate to provide for a retroactive and permanent extension of the exclusion to ensure the uninterrupted provision of these benefits in the future.

EXPLANATION OF PROVISION

The bill retroactively and permanently extends the exclusion for employer-provided educational assistance.

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The bill includes a number of transition rules to deal with cases in which employers provided educational assistance to employees between July 1, 1992, and December 31, 1992.

First, no interest, penalty, or addition to tax is imposed on employers or employees who continued to exclude from income educational assistance payments made after June 30, 1992.

Second, if an employer included educational assistance payments made after June 30, 1992, in its employees' income and wages (for purposes of income or employment taxes) the amount included is deducted from wages paid in 1993 rather than requiring the taxpayers to file a request for refund for 1992. Under this rule, if an employee receives income and wages from the employer between the date of enactment and December 31, 1993, in an amount at least equal to the amount of educational assistance provided to such employee between July 1, 1992, and December 31, 1992, then the employee's income and wages for the purposes of income and employment taxes for 1993 is reduced by such amount of educational assistance. The reduction for income and employment tax purposes is carried out separately with respect to each tax. For purposes of information reports or tax returns, the employer is required to report separately the amount of any such income reduction for an employee as nontaxable income. This special rule does not apply if the employer has actual knowledge that the employee treated the educational assistance as excludable from income. Of course, even if the special rule does apply, if the employee treated educational assistance as nontaxable in 1992 the employee will not be permitted to exclude such amount from income again in 1993.

Amounts reduced from income and wages under this rule do not affect other provisions. For example, the amount that could otherwise be excluded from income as educational assistance in 1993 is not reduced, nor is the amount of compensation used in determining whether retirement plans of the employer satisfy the tax-qualification requirements of the Code.

If an employee does not receive either a refund or an offset of excess employment taxes paid as a result of the retroactive extension of the exclusion, the employee will not suffer a reduction in social security benefits.

If an employer included educational assistance payments made after June 30, 1992, in an employee's income and wages (for purposes of income or employment taxes) and the employee does not receive income and wages from that employer between the date of enactment and December 31, 1993, at least equal to the amount of such educational assistance included in income in 1992, then the employee may seek refund of excess income taxes and employment taxes in accordance with existing rules. In such a case, the employer ****827*596** is required to provide a corrected Form W–2 to the employee.

The bill also clarifies the rule under which educational assistance that does not satisfy section 127 may be excluded from income if and only if it meets the requirements of a working condition fringe benefit.

EFFECTIVE DATE

The extension of the exclusion is effective for taxable years ending after June 30, 1992. The clarification to the working condition fringe benefit rule is effective for taxable years beginning after December 31, 1988.

2. Permanent extension of targeted jobs tax credit and expansion to include approved school-to-work program (sec. 14102 of the bill and sec. 51 of the Code).

PRESENT LAW

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from several targeted groups. The targeted groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged, or disabled.

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The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit expired for individuals who began work for an employer after June 30, 1992.

Certification of members of targeted groups

Generally, an individual is not treated as a member of a targeted group unless certain certification conditions are satisfied. On or before the day on which the individual begins work for the employer, the employer has to have received or have requested in writing from the designated local agency certification that the individual is a member of a targeted group. In the case of a certification of an economically disadvantaged youth participating in a cooperative education program, this requirement is satisfied if necessary certification is requested or received from the participating school on or before the day on which the individual begins work for the employer.

The deadline for requesting certification of targeted group membership is extended until five days after the day the individual begins work for the employer, provided that, on or before the day the individual begins work, the individual has received a written preliminary determination of targeted group eligibility (a "voucher") from the designated local agency (or other agency or organization designated pursuant to a written agreement with the designated ****828*597** local agency). The "designated local agency" is the State employment security agency.

Authorization of appropriations

Present law authorized appropriations for administrative and publicity expenses relating to the credit through June 30, 1992. These monies were to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

REASONS FOR CHANGE

The committee believes that the targeted jobs tax credit provides a useful incentive for hiring disadvantaged individuals. Further, the committee believes that a permanent extension of the targeted jobs tax credit will provide greater certainty to employers as to the availability of the credit. In addition, the committee believes that the creation of a school-to-work program will help participants of the program acquire the skills necessary to compete in the changing workforce of America.

EXPLANATION OF PROVISION

The bill permanently and retroactively extends the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992.[1] In addition, the targeted jobs tax credit is expanded to include qualified participants in an approved school-to-work program beginning participation after December 31, 1993.

A qualified participant in an approved school-to-work program is any individual age 16 through 20 who is enrolled in an approved school-to-work program and certified to be making satisfactory progress toward completing the program. A program is considered to be an approved school-to-work program only if it is a planned program of structured job training designed to integrate academic instruction and work-based learning and is approved by the Secretaries of Labor and Education.

The total number of qualified participants in an approved school-to-work program is capped in each calendar year. The cap is as follows: 125,000 in 1994, 140,000 in 1995, 160,000 in 1996, 180,000 in 1997 and 200,000 in 1998 and each year thereafter. These amounts are to be allocated among the States in proportion to the number of eligible participants that are estimated to be served in approved school-to-work programs for that year. Such estimates will be published by the Secretaries of Labor and Education before the beginning of the year to which the allocation applies. Each State's allocation, in turn, will be allocated among its approved school-to-work programs in such manner as the Secretaries of Labor and

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Education prescribe. Because the approved school-to-work program is a work-study program, the credit would equal 40 percent of up to $3,000 of first-year wages, for a maximum credit of $1,200.

****829*598** EFFECTIVE DATE

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992. The approved school-to-work program is effective for individuals beginning work for an employer after December 31, 1993.

B. INVESTMENT INCENTIVES

1. Permanent extension of research and experimentation tax credit; Modification of fixed base percentage for startup companies (secs. 14111 and 14112 of the bill sec. 41 of the Code)

PRESENT LAW

The research and experimentation tax credit ("research tax credit") provides a credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceed its base amount for that year. The credit expired after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. The credit is not available for expenditures attributable to research that is conducted outside the United States. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

The 20-percent research tax credit also applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain scientific research organizations) over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.

Deductions for expenditures allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 ****830*599** percent of the taxpayer's research tax credit determined for the taxable year.[2]

REASONS FOR CHANGE

Technological development is an important component of economic growth. However, businesses may not find it profitable to invest in some research activities, because of the difficulty in capturing the full benefits from the research. (Costly technological advances made by one firm are often cheaply copied by its competitors.) A research tax credit can help to promote investment in research, so that research activities undertaken approach the optimal level for the overall economy. Therefore, in view of the long-term nature of many research projects, the committee believes that it is appropriate to

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permanently extend the research tax credit.

EXPLANATION OF PROVISION

The research tax credit (including the university basic research credit) is permanently extended.

The bill also adds a new rule regarding the determination of the fixed-base percentage of start-up companies. Under the provision, a taxpayer that did not have gross receipts in at least three years during the 1984–1988 period will be assigned a fixed base percentage of .03 for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. The taxpayer's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurred qualified research expenditures will be as follows: (1) for the taxpayer's sixth year, its fixed-base percentage will be one-sixth of its ratio of qualified research expenditures to gross receipts for its fourth and fifth years; (2) for its seventh year, its fixed-base percentage will be one-third of its ratio for its fifth and sixth years; (3) for its eighth year, its fixed-base percentage will be one-half of its ratio for its fifth through seventh years; (4) for its ninth year, its fixed-base percentage will be two-thirds of its ratio for its fifth through eighth years; and (5) for its tenth year, its fixed-base percentage will be five-sixths of its ratio for its fifth through ninth years. For subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for five years selected by the taxpayer from its fifth through tenth taxable years.

In extending the research tax credit, the committee wishes to reaffirm Congressional intent that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

****831*600** EFFECTIVE DATE

The provision applies to expenditures paid or incurred after June 30, 1992.

2. Capital gains exclusion for certain small business stock (sec. 14113 of the bill and new sec. 1202 of the Code)

PRESENT LAW

Gain from the sale or exchange of stock held for more than one year generally is treated as long-term capital gain.

Net capital gain (i.e., long-term capital gain less short-term capital loss) of an individual is taxed at the same rates that apply to ordinary income, subject to a maximum rate of 28 percent.

REASONS FOR CHANGE

The committee believes that targeted relief for investors who risk their funds in new ventures, small businesses, and specialized small business investment companies, will encourage investments in these enterprises. This should encourage the flow of capital to small businesses, many of which have difficulty attracting equity financing.

EXPLANATION OF PROVISION

In general

The provision generally permits a noncorporate taxpayer who holds qualified small business stock for more than 5 years to

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exclude 50 percent of any gain on the sale or exchange of the stock. The amount of gain eligible for the 50 percent exclusion is limited to the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million gain from stock in that corporation.

Qualified small business stock

In order to qualify as small business stock, the following requirements must be met.

Eligible stock

The stock must be acquired by the taxpayer after December 31, 1992, at the original issuance (directly or through an underwriter) in exchange for money, other property (not including stock) or as compensation for services provided to the corporation (other than services performed as an underwriter of the stock).

In order to prevent evasion of the requirement that the stock be newly issued, the exclusion does not apply if the issuing corporation (1) purchases any stock from the stockholder (or a related person) within 2 years of the issuance of the stock or (2) redeems more than 5 percent (by value) of its own stock within 1 year of the issuance. For purposes of this anti-evasion rule, purchases by persons related to the issuing corporation are treated as purchases by the issuing corporation.

****832*601** Qualified corporation

The corporation must be a qualified small business as of the date of issuance and during substantially all of the period that the taxpayer holds the stock.

A qualified small business is a subchapter C corporation other than: a DISC or former DISC, a corporation with respect to which an election under section 936 is in effect, a regulated investment company, a real estate investment trust, a real estate mortgage investment conduit, or a cooperative. The corporation also generally cannot own (i) real property the value of which exceeds 10 percent of its total assets or (ii) portfolio stock or securities the value of which exceeds 10 percent of its total assets in excess of liabilities.

Active business

At least 80 percent (by value) of the corporation's assets (including intangible assets) must be used by the corporation in the active conduct of a qualified trade or business. If in connection with any future trade or business, a corporation uses assets in certain start-up activities, research and experimental activities or in-house research activities, the corporation is treated as using such assets in the active conduct of a qualified trade or business.

Assets that are held to meet reasonable working capital needs of the corporation, or are held for investment and are reasonably expected to be used within 2 years to finance future research and experimentation, are treated as used in the active conduct of a trade or business. In addition, certain rights to computer software are treated as assets used in the active conduct of a trade or business.

A qualified trade or business is any trade or business other than those involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any other trade or business where the principal asset of the trade or business is the reputation or skill of 1 or more of its employees. The term also excludes any banking, insurance, leasing, financing, investing, or similar business, any farming business (including the business of raising or harvesting trees), any business involving the production or extraction of products of a character for which percentage depletion is allowable, or any business of operating a hotel, motel, restaurant or similar business.

A corporation that is a specialized small business investment company ("SSBIC") is treated as meeting the active business test. An SSBIC is defined as any corporation (other than certain non-qualified corporations) that is licensed by the Small Business Administration under section 301(d) of the Small Business Act of 1958, as in effect on May 13, 1993.

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Gross assets

As of the date of issuance, the excess of (1) the amount of cash and the aggregate adjusted bases of other property held by the corporation, over (2) the aggregate amount of indebtedness of the corporation that does not have an original maturity of more than one year (such as short-term payables), cannot exceed $50 million. For these purposes, amounts received in the issuance are taken into account.

****833*602** If a corporation satisfies the gross assets test as of the date of issuance but subsequently exceeds the $50 million threshold, stock that otherwise constitutes qualified small business stock would not lose that characterization solely as a result of that subsequent event. If a corporation (or a predecessor corporation) exceeds the $50 million threshold at any time after December 31, 1992, the corporation can never again issue stock that would qualify for the exclusion.

Subsidiaries of issuing corporation

In the case of a corporation that owns at least 50 percent of the vote or value of a subsidiary, the parent corporation is deemed to own its ratable share of the subsidiary's assets, and to be liable for a ratable share of the subsidiary's indebtedness, for purposes of the "qualified corporation," "active business," and "gross assets" tests described above.

Pass-through entities

Gain from the disposition of qualified small business stock by a partnership, S corporation, regulated investment company or common trust fund that is taken into account by a partner, shareholder or participant (other than a C corporation) is eligible for the exclusion, provided that (1) all eligibility requirements with respect to qualified small business stock are met, (2) the stock was held by the entity for more than 5 years, and (3) the partner, shareholder or participant held its interest in the entity on the date the entity acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner, shareholder, or participant cannot exclude gain received from an entity to the extent that the partner's, shareholder's, or participant's share in the entity's gain exceeded the partner's, shareholder's or participant's interest in the entity at the time the entity acquired the stock.

Certain tax-free and other transfers

If qualified small business stock is transferred by gift or at death, the transferee is treated as having acquired the stock in the same manner as the transferor, and as having held the stock during any continuous period immediately preceding the transfer during which it was held by the transferor. Qualified small business stock also may be distributed by a partnership to one or more of its partners, as long as (1) all eligibility requirements with respect to qualified small business stock are met, and (2) the partner held its interest in the partnership on the date the partnership acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner cannot treat stock distributed by a partnership as qualified small business stock to the extent that the partner's share of the stock distributed by the partnership exceeded the partner's interest in the partnership at the time the partnership acquired the stock.

Transferees in other cases are not eligible for the exclusion. Thus, for example, if qualified small business stock is transferred to a partnership and the partnership disposes of the stock, any gain from the disposition will not be eligible for the exclusion.

****834*603** In the case of certain incorporations and reorganizations where qualified small business stock is transferred for other stock, the transferor treats the stock received as qualified small business stock. The holding period of the original stock is added to that of the stock received. However, the amount of gain eligible for the exclusion is limited to the gain accrued as of the date of the incorporation or reorganization.

Special basis rules

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If property (other than money or stock) is transferred to a corporation in exchange for its stock, the basis of the stock received is treated as not less than the fair market value of the property exchanged. Thus, only gains that accrue after the transfer are eligible for the exclusion.

Options, nonvested stock, and convertible instruments

Stock acquired by the taxpayer through the exercise of options or warrants, or through the conversion of convertible debt, is treated as acquired at original issue. The determination whether the gross assets test is met is made at the time of exercise or conversion, and the holding period of such stock is treated as beginning at that time.

In the case of convertible preferred stock, the gross assets determination is made at the time the convertible stock is issued, and the holding period of the convertible stock is added to that of the common stock acquired upon conversion.

Stock received in connection with the performance of services is treated as issued by the corporation and acquired by the taxpayer when included in the taxpayer's gross income in accordance with the rules of section 83.

Offsetting short positions

A taxpayer cannot exclude gain from the sale of qualified small business stock if the taxpayer (or a related person) held an offsetting short position with respect to that stock anytime before the 5-year holding period is satisfied. If the taxpayer (or a related person) acquires an offsetting short position with respect to qualified small business stock after the 5-year holding period is satisfied, the taxpayer must elect to treat the acquisition of the offsetting short position as a sale of the qualified small business stock in order to exclude any gain from that stock.

An offsetting short position is defined to be (1) a short sale of property substantially identical to the qualified small business stock (including writing a call option that the holder is more likely than not to exercise or selling the stock for future delivery) or (2) an option to sell substantially identical property at a fixed price.

Capital gains and investment interest

Any gain that is excluded from gross income under the provision is not taken into account in computing long-term capital gain or in applying the capital loss rules of sections 1211 and 1212. In addition, the taxable portion of the gain is taxed at a maximum rate of 28 percent.

****835*604** The amount treated as investment income for purposes of the investment interest limitation does not include any gain that is excluded from gross income under the provision.

Minimum tax

One-half of any excluded gain is treated as a preference for purposes of the alternative minimum tax.

EFFECTIVE DATE

The provision applies to stock issued after December 31, 1992.

3. Rollover of gain from sale of publicly traded securities into specialized small business investment companies (sec. 14114 of the bill and new sec. 1044 of the Code)

PRESENT LAW

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In general, gain or loss is recognized on any sale, exchange or other disposition of property. The Internal Revenue Code contains provisions under which taxpayers may elect not to recognize gain realized on certain "like-kind" exchanges (sec. 1031), or for certain involuntary conversions (sec. 1033).

REASONS FOR CHANGE

The committee believes that permitting gains to be deferred when the proceeds are reinvested in a specialized small business investment company ("SSBIC") is a worthwhile way to channel investment to these specialized small business companies that otherwise may have trouble attracting capital.

EXPLANATION OF PROVISION

The bill permits any corporation or individual to elect to roll over without payment of tax any capital gain realized upon the sale of publicly-traded securities where the corporation or individual uses the proceeds from the sale to purchase common stock or a partnership interest in an SSBIC within 60 days of the sale of the securities. To the extent the proceeds from the sale of the publicly-traded securities exceed the cost of the SSBIC common stock or partnership interest, gain will be recognized currently. The taxpayer's basis in the SSBIC common stock or partnership interest is reduced by the amount of any gain not recognized on the sale of the securities.[3]

Estates, trusts, S-corporations, and partnerships are not eligible to make this election to rollover gains. In addition, "publicly-traded securities" are defined as stock or debt traded on an established securities market. An SSBIC is defined as any partnership or corporation that is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958, as in effect on May 13, 1993.

The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to the lesser of ****836*605** (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision. For corporations, these limits are $250,000 and $1,000,000.

EFFECTIVE DATE

The provision is effective for sales of publicly-traded securities on or after the date of enactment.

4. Modification to minimum tax depreciation rules (sec. 14115 of the bill and secs. 56 and 168 of the Code)

PRESENT LAW

A taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular income tax liability. A taxpayer's tentative minimum tax generally equals 20 percent (24 percent in the case of an individual) of the taxpayer's alternative minimum taxable income in excess of an exemption amount. Alternative minimum taxable income (AMTI) is the taxpayer's taxable income increased by certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items.

One of the adjustments which is made to taxable income to arrive at AMTI relates to depreciation. For AMT purposes, depreciation on most personal property to which the modified Accelerated Cost Recovery System (MACRS) adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) over the property's class life. The class lives of MACRS property generally are longer than the recovery periods allowed for regular tax purposes.

For taxable years beginning after 1989, the AMTI of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) of the corporation exceed AMTI (as determined before this adjustment). In

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general, ACE means AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT–once using the 150 percent declining balance method over the class life and again using the straight-line method over the class life. Taxpayers may elect to use either method for regular tax purposes. If a taxpayer uses the straight-line method for regular tax purposes, it must also use the straight-line method for AMT purposes.

REASONS FOR CHANGE

The committee believes that the two depreciation calculations required by the corporate AMT is a source of considerable complexity. In addition, the committee believes that requiring AMT depreciation to be calculated by using class lives that are generally longer ****837*606** than the regular tax recovery periods may present a disincentive to the investment in certain property.

EXPLANATION OF PROVISION

The depreciation component of the ACE adjustment is eliminated. Taxpayers, including individuals, will compute AMT depreciation by using the 120-percent declining-balance method over the recovery periods applicable for regular tax purposes. The provision does not apply to property eligible only for the straight-line method for regular tax purposes (e.g., residential and nonresidential real property). Taxpayers are allowed to elect to use the 120-percent declining-balance method for regular tax purposes.

EFFECTIVE DATE

The provision is effective for property placed in service after 1993.

5. Increase expensing for small business (sec. 14116 of the bill and sec. 179 of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $10,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $10,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, the amount eligible to be expensed for a taxable year may not exceed the taxable income of the taxpayer for the year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

REASONS FOR CHANGE

The committee believes that increasing the amount allowed to be expensed will provide an incentive for small businesses to increase their investment in capital assets, thus promoting economic growth and increasing demand for productive assets.

EXPLANATION OF PROVISION

The $10,000 amount allowed to be expensed under section 179 is increased to $25,000.

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EFFECTIVE DATE

The provision is effective for property placed in service in taxable years beginning after December 31, 1992.

****838*607** 6. Bonds for high-speed intercity rail facilities (sec. 14121 of the bill and sec. 142 of the Code).

PRESENT LAW

High-speed intercity rail facilities qualify for tax-exempt bond financing if trains operating on the facility are reasonably expected to carry passengers and their baggage at average speeds in excess of 150 miles per hour between stations. Such facilities need not be governmentally-owned, but the owner must irrevocably elect not to claim depreciation or any tax credit with respect to bond-financed property.

Twenty-five percent of each bond issue for high-speed intercity rail facilities must receive an allocation from a State private activity bond volume limitation. If facilities are located in two or more States, this requirement must be met on a State-by-State basis for the financing of facilities located in each State.

REASONS FOR CHANGE

The committee believes that bonds for high-speed rail facilities should not be subject to the State private activity bond volume limitations.

****839** EXPLANATION OF PROVISION

The bill exempts private activity bonds to provide high-speed rail facilities from State private activity bond volume limitations.

EFFECTIVE DATE

The provision is effective for bonds issued after December 31, 1993.

7. Permanent extension of qualified small-issue bonds (sec. 14122 of the bill and sec. 144 of the Code).

PRESENT LAW

Interest on certain small issues of private activity bonds is excluded from income if at least 95 percent of the bond proceeds is used to finance manufacturing facilities or agricultural land or property for first-time farmers ("qualified small-issue bonds"). Qualified small-issue bonds are issues having an aggregate authorized face amount of $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million. Special limits apply to these bonds for first-time farmers.

Authority to issue qualified small-issue bonds expired after June 30, 1992.

REASONS FOR CHANGE

The committee believes that it is appropriate to permanently extend the authority for qualified small-issue bonds.

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***608** EXPLANATION OF PROVISION

The bill permanently extends the authority to issue qualified small-issue bonds.

EFFECTIVE DATE

The proposal is effective for bonds issued after June 30, 1992.

C. EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT (SEC. 14131 OF THE BILL AND SECS. 32, 162, AND 213 OF THE CODE)

PRESENT LAW

Eligible low-income workers can claim a refundable earned income tax credit (EITC) of up to 18.5 percent of the first $7,750 of earned income for 1993 (19.5 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1993 is $1,434 ($1,511 for taxpayers with more than one qualifying child).

This maximum credit is reduced by 13.21 percent of earned income (or adjusted gross income, if greater) in excess of $12,200 (13.93 percent for taxpayers with more than one qualifying child). The EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $23,050. The maximum amount of earned income on which the EITC may be claimed, and the income threshold for the phaseout of the EITC, are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.Present law provides that the credit rates for the EITC increase in 1994, as shown in the following table.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The EITC can be received on an advance basis by a worker who elects to furnish a certificate of eligibility to his or her employer. For such a worker, the employer makes an advance payment of the credit at the time wages are paid.

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC. The maximum supplemental young child credit for 1993 is $388.

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base as the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage. In addition, the taxpayer is denied an itemized deduction for medical expenses of qualifying insurance coverage up to the amount of credit claimed. ****840*609** The maximum supplemental health insurance credit for 1993 is $465.

REASONS FOR CHANGE

Providing a larger basic EITC to larger families recognizes the role the EITC can play in alleviating poverty. Moreover, this larger credit may provide work incentives and increase equity by reducing the tax burden for those workers with a lower ability to pay taxes. Further, the committee believes that extending the EITC to low-income working taxpayers without qualifying children will provide these taxpayers with an additional benefit for entering the labor force and reduce the burden of the individual income and payroll taxes on those with a lower ability to pay taxes. Finally, repeal of the supplemental young child and health insurance components of the EITC will ease compliance burdens for lower-income taxpayers while providing substantial simplification.

EXPLANATION OF PROVISION

For taxpayers with one qualifying child, the EITC will be increased to 26.60 percent of the first $7,750 of earned income in

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1994. The maximum credit will be $2,062 which will be reduced by 16.16 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit will be completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $23,760. In 1995 and thereafter, the credit rate will increase to 34.37 percent. The maximum amount of earned income on which the credit could be claimed will be reduced to (an estimated) $6,170. Thus, the maximum credit in 1995 will be approximately $2,120 (which equals the maximum credit available in 1994, adjusted for projected inflation). The phase-out rate will remain the same as in 1994.

For taxpayers with two or more qualifying children, the EITC will be increased to 31.59 percent of the first $8,500 of earned income in 1994. The maximum credit will be $2,685 which will be reduced by 15.79 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. Thus, in 1994, the credit will be completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $28,000. In 1995 and thereafter, the credit rate will increase to 39.66 percent. The maximum amount of earned income on which the credit could be claimed is expected to be approximately $8,730 in 1995 (which equals the 1994 level, adjusted for projected inflation). Thus, the maximum credit in 1995 is expected to be approximately $3,460. The phase-out rate for 1995 and thereafter will be 19.83 percent.

Under the bill, the EITC will also be extended to low-income workers who (1) do not have any qualifying children (including workers with children who are not qualifying children with respect to that worker); (2) are age 22 or older; and (3) who may not be claimed as a dependent on another taxpayer's return. For these taxpayers, the EITC will be 7.65 percent of the first $4,000 of earned income (for a maximum credit of $306 in 1994). The maximum credit will be reduced by 7.65 percent of earned income (or adjusted gross income, if greater) above $5,000. In 1994 the credit ****841*610** will be completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $9,000. This credit will not be available on an advance payment basis.

As under present law, all dollar thresholds for years after 1994 will be indexed for inflation.

The supplemental young child credit and the supplemental health insurance credit will be repealed.

The Committee understands that very few taxpayers utilize the advance payment option to receive the EITC ratably, rather than as a lump sum when the tax return is filed. The expansion of the EITC makes receipt of the EITC on an advance payment basis more important as a means to alleviate poverty throughout the year, as well as to provide a timely work incentive. Accordingly, the Committee encourages the Internal Revenue Service (IRS) to promote the advance payment option to eligible taxpayers. There are a number of strategies the IRS may pursue in this endeavor and the Committee expects the IRS to choose those strategies believed most effective. One possible strategy would be for the IRS to include notification of the advance payment option with refund checks sent to taxpayers who claim the EITC.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

D. REAL ESTATE INVESTMENT PROVISIONS

1. Permanent extension of qualified mortgage bonds and mortgage credit certificates (sec. 14141 of the bill and sec. 143 of the Code).

PRESENT LAW

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds (sec. 143). Persons receiving QMB loans must satisfy a home purchase price, borrower income, first-time homebuyer,

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and other requirements. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after purchase.

Mortgage credit certificates

Qualified governmental units may elect to exchange QMB authority for authority to issue mortgage credit certificates ("MCCs") (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs.

****842*611** Expiration

Authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs expired after June 30, 1992.

REASONS FOR CHANGE

The committee believes that extending these programs permanently will provide greater planning certainty to States and local governments, thereby permitting these entities to assist first-time homebuyers more efficiently.

EXPLANATION OF PROVISION

The bill permanently extends the authority to issue QMBs and to elect to trade in private activity bond volume limit for authority to issue MCCs.

EFFECTIVE DATE

The extension of the QMB and MCC programs is effective after June 30, 1992.

2. Permanent extension of the tax credit for low-income rental housing (sec. 14142 of the bill and sec. 42 of the Code)

PRESENT LAW

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income rental housing. For most qualifying housing, the credit has a present value of 70 percent of the qualified basis of the low-income housing units. For housing also receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost (e.g., costs other than rehabilitation expenditures) of existing housing that is substantially rehabilitated, the credit has a present value of 30 percent of qualified costs. In qualified census tracts and difficult development areas, the 70-percent and 30-percent may be increased to 91-percent and 39-percent respectively.

The credit amount is based on the qualified basis of the housing units serving the low-income tenants. A residential rental project will qualify for the credit only if (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with 50 percent or less of area median income, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with 60 percent or less of area median income. These income figures are adjusted for family size. The low income set-aside is elected when the project is placed in service.

Maximum rents that may be charged families in units on which a credit is claimed depend on the number of bedrooms in the unit. The rent limitation is 30 percent of the qualifying income of a family deemed to have a size of 1.5 persons per bedroom (e.g., a two-bedroom unit has a rent limitation based on the qualifying income for a family of three).

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****843*612** To qualify for the credit, a building owner generally must receive a low-income housing credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The annual credit ceiling for each State is $1.25 per resident per year.

The low-income housing credit expired after June 30, 1992.

REASONS FOR CHANGE

The committee believes the low income housing credit is a useful incentive for increasing the stock of affordable housing available to low-income individuals. Further, the committee believes that a permanent extension of the low-income housing credit will provide greater planning certainty needed for the efficient delivery of this Federal subsidy. Finally, the committee believes that buildings receiving assistance under the National Affordable Housing Act of 1990 should be eligible for the 70-percent credit as long as stricter income targeting requirements are satisfied.

EXPLANATION OF PROVISION

The bill permanently extends the low-income housing tax credit.[4] It also provides that a building shall not be treated as Federally subsidized solely by reason of assistance with respect to that building received under the National Affordable Housing Act of 1990 (as in effect on the date of enactment of this provision) if 40-percent or more of the aggregate residential rental units in the residential rental project receiving the assistance are occupied by individuals with 50-percent or less of area median income. These projects are eligible for the 70-percent and 30-percent credits but not for the 91-percent or 39-percent credits otherwise available in qualified census tracts and difficult development areas.

EFFECTIVE DATE

The provision generally is effective after June 30, 1992. The provision relating to Federal subsidies under the National Affordable Housing Act of 1990 is effective on the date of enactment.

3. Modification of passive loss rules for certain real estate persons (sec. 14143 of the bill and sec. 469 of the Code)

PRESENT LAW

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. Credits from passive activities may not reduce the taxpayer's tax liability, to the extent such credits exceed regular tax liability from passive activities. Deductions and credits that are suspended under these rules are carried forward and ****844*613** treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.

The passive loss rules apply to individuals, estates and trusts, closely held C corporations, and personal service corporations. A special rule permits closely held C corporations to apply passive activity losses and credits against active business income (or tax liability allocable thereto) but not against portfolio income.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. To materially participate in an activity, a taxpayer must be involved in the operations of the activity on a regular, continuous, and substantial basis. Except as provided in regulations, a taxpayer is treated as not materially participating in an activity held through a limited partnership interest.[5]

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Rental activities (including rental real estate activities) are also treated as passive activities, regardless of the level of taxpayer's participation. In general, rental activities cannot be treated as part of a larger activity that includes nonrental activities. A special rule permits the deduction of up to $25,000 of losses from rental real estate activities (even though they are considered passive), if the taxpayer actively participates in them. This $25,000 amount is allowed for taxpayers with adjusted gross incomes of $100,000 or less, and is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000. Active participation is a lesser standard of involvement than material participation. A taxpayer is treated as actively participating if, for example, he participates, in a significant and bona fide sense, in the making of management decisions or arranging for others to provide services (such as repairs). The active participation standard is not satisfied, however, if the taxpayer's interest is less than 10 percent (by value) of all interests in the activity. A taxpayer generally is deemed not to satisfy the active participation standard with respect to property he holds through a limited partnership interest.

If the taxpayer has suspended losses from a former passive activity (an activity that is not a passive activity for the current taxable year but was a passive activity for the taxable year in which the loss arose), the losses are offset against the income from such activity for the taxable year, and any excess after the offset continues to be treated as a loss from a passive activity.

REASONS FOR CHANGE

The committee considers it unfair that a person who performs personal services in a real estate trade or business in which he materially participates may not offset losses from rental real estate activities against income from nonrental real estate activities or against other types of income such as portfolio investment income. ****845*614** The committee bill modifies the passive loss rule to alleviate this unfairness.

EXPLANATION OF PROVISION

The provision treats a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rule if the taxpayer meets eligibility requirements relating to real property trades or businesses in which the taxpayer performs services. Whether a taxpayer materially participates in his rental real estate activities is determined as if each interest of the taxpayer in rental real estate is a separate activity, unless the taxpayer elects to treat all interests in rental real estate as one activity. The provision applies to individuals and closely held C corporations.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

An individual taxpayer meets the eligibility requirements if more than half of the personal services the taxpayer performs in a trade or business are in real property trades or businesses in which he materially participates.

In the case of a joint return, it is intended that each spouse's personal services are taken into account separately. In determining material participation, however, the provision does not change the present-law rule (sec. 469(h)(5)) that the participation of the spouse of the taxpayer is taken into account. Thus, for example, a husband and wife filing a joint return meet the eligibility requirements of the provision if during the taxable year one spouse performs at least half of his or her business services in a real estate trade or business in which either spouse materially participates. The couple does not fail the eligibility requirements if less than half of their business services, taken together, are performed in real estate trades or businesses in which either of them materially participates, provided that more than half of one spouse's business services qualify.

Personal services performed as an employee are not treated as performed in a real estate trade or business unless the person performing services has more than a 5 percent ownership interest in the employer (within the meaning of sec. 416(i)(1)(B)).

A closely held C corporation meets the eligibility requirements if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which the corporation materially participates (within the meaning of sec. 469(h)(4)).

Material participation has the same meaning as under present law. Thus, as under present law, except as provided in

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regulations, no interest as a limited partner in a limited partnership is treated as an interest with respect to which the taxpayer materially participates. The election permitting a taxpayer to aggregate his rental real estate activities for purposes of determining whether such activities are treated as not passive under the provision is not intended to alter present law with respect to material participation through limited partnership interests.

****846*615** Suspended losses from any rental real property activity that is treated as not passive by reason of the provision are treated as losses from a former passive activity. Thus, such suspended losses are limited to income from the activity, and are not allowed to offset other income. When the taxpayer disposes of his entire interest in the activity in a fully taxable transaction with an unrelated party, any remaining suspended losses allocable to the activity are allowed in full.

Modified adjusted gross income is determined without regard to any loss allowable by reason of this provision, for purposes of the present-law $25,000 allowance of losses and deduction-equivalent credits from certain rental activities.

EFFECTIVE DATE

The provision is effective with respect to taxable years beginning after December 31, 1993.

4. Changes relating to real estate investments by pension funds and others (secs. 14144–14149)

a. Modification of the rules related to debt-financed income (sec. 14144 of the bill and sec. 514 of the Code)

PRESENT LAW

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are excluded from UBTI, except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)).

An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions, and certain other exempt organizations (collectively referred to as "qualified organizations") that make debt-financed investments in real property (sec. 514(c)(9)(A)). Under this exception, income from investments in real property is not treated as income from debt-financed property. Mortgages are not considered real property for purposes of the exception.

The real property exception to the debt-financed property rules is available for investments in debt-financed property, only if the following six restrictions are satisfied: (1) the purchase price of the real property is a fixed amount determined as of the date of the acquisition (the "fixed price restriction"); (2) the amount of the indebtedness or any amount payable with respect to the indebtedness, or the time for making any payment of any such amount, is not dependent (in whole or in part) upon revenues, income, or profits derived from the property (the "participating loan restriction"); (3) the property is not leased by the qualified organization to the seller or to a person related to the seller (the "leaseback restriction"); (4) in the case of a pension trust, the seller or lessee of the ****847*616** property is not a disqualified person (the "disqualified person restriction"); (5) the seller or a person related to the seller (or a person related to the plan with respect to which a pension trust was formed) is not providing financing in connection with the acquisition of the property (the "seller-financing restriction"); and (6) if the investment in the property is held through a partnership, certain additional requirements are satisfied by the partnership (the "partnership restrictions") (sec. 514(c)(9)(B)(i) through (vi)).

REASONS FOR CHANGE

The committee believes that modifications to the debt-financed income rules are desirable to permit qualified organizations to make debt-financed investments in real property on commercially reasonable terms in circumstances where the committee

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believes there is no potential for abuse.

EXPLANATION OF PROVISION

Relaxation of the leaseback and disqualified person restrictions

The provision relaxes the leaseback and disqualified person restrictions to permit a limited leaseback of debt-financed real property to the seller (or a person related to the seller) or to a disqualified person.[6] The exception applies only where (1) no more than 25 percent of the leasable floor space in a building (or complex of buildings) is leased back to the seller (or related party) or to the disqualified person, and (2) the lease is on commercially reasonable terms, independent of the sale and other transactions.

Relaxation of the seller-financing restriction

The provision relaxes the seller-financing restriction to permit seller financing on terms that are commercially reasonable independent of the sale and other transactions. The provision grants authority to the Treasury Department to issue regulations for the purpose of determining commercially reasonable financing terms.

The provision does not modify the present-law fixed price and participating loan restrictions. Thus, for example, income from real property acquired with seller-financing where the timing or amount of payment is based on revenue, income, or profits from the property generally will continue to be treated as income from debt-financed property, unless some other exception applies.

Relaxation of the fixed price and participating loan restriction for property acquired from financial institutions

The provision relaxes the fixed price and participating loan restrictions for certain sales of real property foreclosed upon by financial institutions.[7] The relaxation of these rules is limited to cases where: (1) a qualified organization acquires the property from a financial institution that acquired the real property by foreclosure ****848*617** (or after an actual or imminent default), or was held by the selling financial institution at the time that it entered into conservatorship or receivership; (2) any gain recognized by the financial institution with respect to the property is ordinary income; (3) the stated principal amount of the seller financing does not exceed the financial institution's outstanding indebtedness (including accrued but unpaid interest) with respect to the property at the time of foreclosure or default; and (4) the present value of the maximum amount payable pursuant to any participation feature cannot exceed 30 percent of the total purchase price of the property (including contingent payments).

EFFECTIVE DATE

The provision is effective for acquisitions (and also for leases entered into) on or after January 1, 1994.

b. Repeal of the automatic UBTI rule for publicly-traded partnerships (sec. 14145 of the bill and sec. 512 of the Code)

PRESENT LAW

In general, the character of a partner's distributive share of partnership income is the same as if the income had been directly realized by the partner. Thus, whether a tax-exempt organization's share of income from a partnership (other than from a publicly-traded partnership) is treated as unrelated business income depends on the underlying character of the income (sec. 512(c)(1)).

By contrast, a tax-exempt organization's distributive share of gross income from a publicly-traded partnership (that is not

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otherwise treated as a corporation) automatically is treated as gross income derived from an unrelated trade or business (sec. 512(c)(2)(A)). The organization's share of the partnership deductions is allowed in computing the organization's UBTI (sec. 512(c)(2)(B)).

REASONS FOR CHANGE

The automatic UBTI rule effectively prevents pension funds and other tax-exempt organizations from investing in publicly-traded partnerships. The committee believes these investors could provide a valuable source of capital that should be available to publicly-traded partnerships.

EXPLANATION OF PROVISION

The provision repeals the rule that automatically treats income from publicly-traded partnerships as UBTI. Thus, under the provision, investments in publicly-traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules.

EFFECTIVE DATE

The provision is effective for partnership years beginning on or after January 1, 1994.

****849*618** c. Permit title-holding companies to receive small amounts of UBTI (sec. 14146 of the bill and secs. 501(c)(2) and (c)(25) of the Code)

PRESENT LAW

Section 501(c)(2) provides tax-exempt status to certain corporations organized for the exclusive purpose of holding title to property and remitting any income from the property to one or more related tax-exempt organizations. Section 501(c)(25) provides tax-exempt status to certain corporations and trusts that are organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the income to no more than 35 shareholders or beneficiaries that are: (1) qualified pension, profit-sharing, or stock bonus plans (sec. 401(a)); (2) governmental pension plans (sec. 414(d)); (3) the United States, a State or political subdivision, or governmental agencies or instrumentalities; or (4) tax-exempt charitable, educational, religious, or other organizations described in section 501(c)(3). However, the IRS has taken the position that a title-holding company described in section 501(c)(2) or 501(c)(25) will lose its tax-exempt status if it generates any amount of certain types of UBTI.[8]

REASONS FOR CHANGE

Typical investments of section 501(c)(2) and (c)(25) corporations include shopping centers, office buildings, and apartment buildings. These real estate investments typically generate rental income, which generally is not considered UBTI, but may also generate small amounts of income which could be treated as UBTI (e.g., money collected from laundry machines used by tenants, or from vending machines offered as a convenience to the patrons of a shopping center).

The committee believes that a section 501(c)(2) or (c)(25) organization should not lose its exemption merely because it receives small amounts of UBTI that are incidentally derived from the holding of real property.

EXPLANATION OF PROVISION

The provision permits a title-holding company that is exempt from tax under sections 501(c)(2) or 501(c)(25) to receive UBTI (that would otherwise disqualify the company) up to 10 percent of its gross income for the taxable year, provided that

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the UBTI is incidentally derived from the holding of real property. For example, income generated from parking or operating vending machines located on real property owned by a title-holding company generally would qualify for the 10-percent de minimis rule, while income derived from an activity that is not incidental to the holding of real property (e.g., manufacturing) would not qualify. In cases where unrelated income is incidentally derived from the holding of real property, receipt by a title-holding company of such income (up to the 10-percent limit) will not jeopardize the title-holding company's tax-exempt status, but nonetheless, will be subject to tax as UBTI.

****850*619** In addition, the provision provides that a section 501(c)(2) or 501(c)(25) title-holding company will not lose its tax-exempt status if UBTI that is incidentally derived from the holding of real property exceeds the 10-percent limitation, provided that the title-holding company establishes to the satisfaction of the Secretary of the Treasury that the receipt of UBTI in excess of the 10-percent limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such excess UBTI.

EFFECTIVE DATE

The provision is effective for taxable years beginning on or after January 1, 1994.

d. Exclusion from UBTI of gains from the disposition of real property acquired from financial institutions in conservatorship or receivership (sec. 14147 of the bill and sec. 512(b) of the Code)

PRESENT LAW

In general, gains or losses from the sale, exchange or other disposition of property are excluded from UBTI (sec. 512(b)(5)). However, gains or losses from the sale, exchange or other disposition of property held primarily for sale to customers in the ordinary course of a trade or business are not excluded from UBTI (the "dealer UBTI rule") (sec. 512(b)(5)(B)).

REASONS FOR CHANGE

Real property that is owned by troubled financial institutions often is sold in bundled packages. This enables the financial institution to dispose of the less desirable properties together with the more desirable properties. It also allows institutions with large portfolios of properties to pass on to purchasers some of the burden of an orderly liquidation of the properties.

The committee understands that the dealer UBTI rule effectively discourages pension funds and other tax-exempt organizations from investing in the properties bundled together by troubled financial institutions. The committee believes that these investors could provide a valuable source of capital for the purchase of these bundled properties.

EXPLANATION OF PROVISION

The provision provides an exception to the dealer UBTI rule by excluding gains and losses from the sale, exchange or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership. Only real property and mortgages owned by a financial institution (or that was security for a loan held by the financial institution) at the time that the institution entered conservatorship or receivership are eligible for the exception.

The exclusion is limited to properties designated as disposal property within nine months of acquisition, and disposed of within two-and-a-half years of acquisition. The two-and-a-half year disposition period may be extended by the Secretary if an extension ****851*620** is necessary for the orderly liquidation of the property. No more than one-half by value of properties acquired in a single transaction may be designated as disposal property.

The exclusion is not available for properties that are improved or developed to the extent that the aggregate expenditures on development do not exceed 20 percent of the net selling price of the property.

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EFFECTIVE DATE

The provision is effective for property acquired on or after January 1, 1994.

e. Exclusion of certain option premiums and loan commitment fees from UBTI (sec. 14148 of the bill and sec. 512(b) of the Code)

PRESENT LAW

Income from a trade or business that is unrelated to an exempt organization's purpose generally is UBTI. Passive income such as dividends, interest, royalties, and gains or losses from the sale, exchange or other disposition of property generally is excluded from UBTI (sec. 512(b)). In addition, gains on the lapse or termination of options on securities are explicitly exempted from UBTI (sec. 512(b)(5)).

Present law is unclear on whether premiums from unexercised options on real estate and loan commitment fees are UBTI.

REASONS FOR CHANGE

The committee believes that gains and losses from options should be treated consistently for purposes of the UBTI. In addition, the committee believes that taxing loan commitment fees and premiums from unexercised options on real estate is inconsistent with the generally tax-free treatment of income from investment activities accorded to exempt organizations.

EXPLANATION OF PROVISION

The provision expands the current exception for gains on the lapse or termination of options on securities to gains or losses from such options (without regard to whether they are written by the organization), from options on real property, and from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale or lease of real property.

In addition, the provision excludes loan commitment fees from UBTI. For purposes of this provision, loan commitment fees are non-refundable charges made by a lender to reserve a sum of money with fixed terms for a specified period of time. These charges are to compensate the lender for the risk inherent in committing to make the loan (e.g., for the lender's exposure to interest rate changes and for potential lost opportunities).

****852*621** EFFECTIVE DATE

The provision is effective for premiums or loan commitment fees that are received on or after January 1, 1994.

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 14149 of the bill and sec. 856(h) of the Code)

PRESENT LAW

A real estate investment trust ("REIT") is not taxed on income distributed to shareholders. A corporation does not qualify as a REIT if at any time during the last half of its taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals ("the five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

Dividends paid by a REIT are not UBTI,[9] unless the stock in the REIT is debt-financed. Depending on its character, income

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earned by a partnership may be UBTI (sec. 512(c)). Special rules treat debt-financed income earned by a partnership as UBTI (sec. 514(c)(9)(B)(vi)).

REASONS FOR CHANGE

The committee believes that relaxation of the five or fewer rule is appropriate to encourage pension fund investment in REITs. Such investment, however, may permit circumvention of the UBIT. Accordingly, in certain circumstances, UBIT is imposed on a pension trust holding shares in a REIT if direct ownership of the REIT assets by the pension trust would have resulted in UBIT.

EXPLANATION OF PROVISION

Qualification as a REIT

The bill provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the bill treats beneficiaries of the pension trust as holding stock in the REIT in proportion to their actuarial interests in the trust. This rule does not apply if disqualified persons, within the meaning of section 4975(e)(2) (other than by reason of subparagraphs (B) and (I)), together own five percent or more of the value of the REIT stock and the REIT has earnings and profits attributable to a period during which it did not qualify as a REIT.[10]

In addition, the bill provides that a REIT cannot be a personal holding company and, therefore, is not subject to the personal holding company tax on its undistributed income.

Unrelated business taxable income

Under the bill, certain pension trusts owning more than 10 percent of a REIT must treat a percentage of dividends from the REIT ****853*622** as UBTI. This percentage is the gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the gross income of the REIT for the year in which the dividends are paid. Dividends are not treated as UBTI, however, unless this percentage is at least five percent.

The UBTI rule applies only if the REIT qualifies as a REIT by reason of the above modification of the five or fewer rule. Moreover, the UBTI rule applies only if (1) one pension trust owns more than 25 percent of the value of the REIT, or (2) a group of pension trusts individually holding more than 10 percent of the value of the REIT collectively own more than 50 percent of the value of the REIT.

EFFECTIVE DATE

The provision applies to taxable years beginning on or after January 1, 1994.

5. Treatment of certain real property business indebtedness of individuals (sec. 14150 of the bill and secs. 108 and 1017 of the Code)

PRESENT LAW

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness. The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer.

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Present law also provides that if the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced, and the reduction would otherwise be treated as income to the purchaser from the discharge of indebtedness, the reduction is treated as a purchase price adjustment (sec. 108(e)(5)). This rule applies only if the reduction does not occur in a title 11 case or when the purchaser is insolvent.

Prior law provided an elective exception for the discharge of qualified business indebtedness, defined as indebtedness incurred or assumed by an individual in connection with property used in his trade or business. The excludable amount was limited to the basis of the taxpayer's depreciable property, and the excludable amount was applied to reduce the basis of depreciable property of the taxpayer. The taxpayer could elect to treat inventory as depreciable property for this purpose. If the amount of discharge income exceed the basis of depreciable property, the excess was included in gross income for the year of the discharge. This exception was repealed by the Tax Reform Act of 1986.

REASONS FOR CHANGE

The committee understands that real property has declined in value in some areas of the nation, in some cases to such a degree that the property can no longer support the debt with which it is ****854*623** encumbered. The committee believes that where an individual has discharge of indebtedness that results from a decline in value of business real property securing that indebtedness, it is appropriate to provide for deferral, rather than current inclusion, of the resulting income. Generally, that deferral should not extend beyond the period that the taxpayer owns the property.

EXPLANATION OF PROVISION

The bill provides an election to taxpayers other than C corporations to exclude from gross income certain income from discharge of qualified real property business indebtedness. The amount so excluded cannot exceed the basis of certain depreciable real property of the taxpayer and is treated as a reduction in the basis of that property.

Qualified real property business indebtedness is indebtedness that (1) is incurred or assumed in connection with real property used in a trade or business, (2) is secured by that real property, and (3) with respect to which the taxpayer has made an election under this provision. Indebtedness incurred or assumed on or after January 1, 1993 is not qualified real property business indebtedness unless it is either (1) debt incurred to refinance qualified real property business debt incurred or assumed before that date (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (2) qualified acquisition indebtedness. Qualified real property business indebtedness does not include qualified farm indebtedness.

Qualified acquisition indebtedness is debt incurred to acquire, construct or substantially improve real property that is secured by such debt, and debt resulting from the refinancing of qualified acquisition debt, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

The amount excluded under the provision with respect to the discharge of any qualified real property business indebtedness may not exceed the excess of (1) the outstanding principal amount of such debt (immediately before the discharge), over (2) the fair market value (immediately before the discharge) of the business real property which is security for the debt. For this purpose, the fair market value of the property is reduced by the outstanding principal amount of any other qualified real property indebtedness secured by the property immediately before the discharge.

For example, assume that on July 1, 1993, Individual J owns a building worth $150,000, used in his trade or business, that is subject to a first mortgage securing a debt of J's of $110,000 and second mortgage securing a second debt of J's of $90,000. J is neither a bankrupt nor insolvent and neither debt is qualified farm indebtedness. J agrees with his second mortgagee to reduce the second mortgage debt to $30,000, resulting in discharge of indebtedness income in the amount of $60,000. Under the provision, assuming that J has sufficient basis in business real property to absorb the reduction (see below), J can elect to exclude $50,000 of that discharge from gross income. This is because the principal amount of the discharged debt immediately before the discharge (i.e., $90,000) exceeds the fair market value of the property securing it (i.e., $150,000 of free and clear value less $110,000 of other qualified ****855*624** business real property debt or $40,000) by $50,000. The

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remaining $10,000 of discharge is included in gross income.

The amount excluded under the provision may not exceed the aggregate adjusted bases (determined as of the first day of the next taxable year or, if earlier, the date of disposition) of depreciable real property held by the taxpayer immediately before the discharge, determined after any reductions under subsections (b) and (g) of section 108. Depreciable real property acquired in contemplation of the discharge is treated as not held by the taxpayer immediately before the discharge.

The amount of debt discharge excluded under the provision is applied, using the rules of section 1017 (as modified by the provision), to reduce the basis of business real property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs. The election under sec. 1017(b)(3) to treat inventory as qualified property does not apply. If the taxpayer disposes of real property (in the transaction that gave rise to the discharge or otherwise) prior to the first day of the next taxable year, then the reduction in basis of such property is made as of the time immediately before the disposition.

In the case of discharge of indebtedness of a partnership, the determination of whether debt is qualified real property indebtedness (and the application of the fair market value limitation) is made at the partnership level. For example, if partnership debt is discharged, the determination of whether the debt was incurred or assumed in connection with real property used in a trade or business is made by reference to the trade or business of the partnership and real property owned by the partnership. The election to apply the provision is made at the partner level, however, on a partner by partner basis. An interest of a partner in a partnership that owns depreciable real property is treated as depreciable real property to the extent of the partner's proportionate interest in the depreciable real property held by the partnership. The partnership's basis in depreciable real property with respect to such partner is correspondingly reduced.

The deemed distribution (under Code section 752) arising from the reduction in a partner's share of partnership liabilities attributable to the discharge of partnership debt is treated as follows. The allocation of an amount of debt discharge income to a partner results in that partner's basis in the partnership being increased by such amount (sec. 705). The reduction in a partner's share of partnership liabilities caused by the debt discharge also results in a deemed distribution (under sec. 752) which in turn results in a reduction (under sec. 733) of the partner's basis in his partnership interest. This section 733 basis reduction is separate from any reduction in basis of the partner's interest under the provision, i.e., the basis reduction that occurs as a result of treating the partnership interest as depreciable real property to the extent of the partner's proportionate interest in the depreciable real property held by the partnership (provided the partnership makes a corresponding reduction in the basis of depreciable partnership real property with respect to that partner).

In applying this provision to income from the discharge of indebtedness of an S corporation, the election is made by the S corporation ****856*625** (sec. 1363(c)), and the exclusion and basis reduction are both made at the S corporation level (sec. 108(d)(7)). The shareholders' basis in their stock is not adjusted by the amount of debt discharge income that is excluded at the corporate level. As a result of these rules, if an amount is excluded from the income of an S corporation under this provision, the income flowing through to the shareholders will be reduced (compared to what the shareholders' income would have been without the exclusion). Where the reduced basis in the corporation's depreciable property later results in additional income (or a smaller loss) to the corporation because of reduced depreciation or additional gain (or smaller loss) on disposition of the property, the additional income (or smaller loss) will flow through to the shareholders at that time, and will then result in a larger increase (or smaller reduction) in the shareholder's basis than if this provision had not previously applied. Thus, the provision simply defers income to the shareholders.

If depreciable real property, the basis of which was reduced under this provision, is disposed of, then for purposes of determining the amount of recapture under section 1250: (1) any such basis reduction is treated as a deduction allowed for depreciation, and (2) the determination of what would have been the depreciation adjustment under the straight line method is made as if there had been no such reduction. Thus, the amount of the basis reduction that is recaptured as ordinary income is reduced over the time the taxpayer continues to hold the property, as the taxpayer forgoes depreciation deductions due to the basis reduction.

EFFECTIVE DATE

The provision is effective with respect to discharges after December 31, 1992 in taxable years ending after that date.

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6. Increase recovery period for depreciation of nonresidential real property (sec. 14151 of the bill and sec. 168 of the Code)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of nonresidential real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year generally is determined by using the straight-line method and a recovery period of 31.5 years. For alternative minimum tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined by using the straight-line method and a recovery period of 40 years.

REASONS FOR CHANGE

The committee believes that the recovery period for nonresidential real property under present law results in depreciation allowances that are larger than the actual decline in value of the property. In order to more accurately measure the economic income ****857*626** derived from the use of nonresidential real property in a trade or business or an investment activity, the recovery period for the depreciation of such property should be increased.

EXPLANATION OF PROVISION

The bill requires the depreciation deduction allowed with respect to nonresidential real property for regular tax purposes to be determined by using a recovery period of 39 years. The bill does not change the depreciation deduction allowed with respect to nonresidential real property for alternative minimum tax purposes.

EFFECTIVE DATE

The bill generally applies to property placed in service on or after February 25, 1993. The provision does not apply to property that a taxpayer places in service before January 1, 1994, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before February 25, 1993, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before February 25, 1993. A qualified person for this purpose is any person who transfers rights in such a contract or such property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

E. LUXURY EXCISE TAX; DIESEL FUEL TAX FOR MOTORBOATS

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Indexing of luxury excise tax on automobiles (secs. 14161 and 14162 of the bill and secs. 4001–4012 of the Code)

PRESENT LAW

Present law imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000. The tax also applies to subsequent purchases of component parts and accessories occurring within six months of the date the automobile, boat, or aircraft is placed in service.

The tax generally applies only to the first retail sale after manufacture, production or importation of items subject to the tax. It does not apply to subsequent sales of these items. The taxes on automobiles, boats, and aircraft generally do not apply to items used in trade or business.

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The tax applies to sales before January 1, 2000.

REASONS FOR CHANGE

During the recent recession, the boat, aircraft, jewelry, and fur industries have suffered job losses and increased unemployment. The committee believes that it is appropriate to eliminate the burden these taxes impose in the interests of fostering economic recovery in those and related industries.

****858*627** The committee recognizes that in the absence of indexation of the threshold above which the tax on automobiles applies, even modest inflation will subject more automobiles to the luxury tax than were subject to the tax when it was first enacted.

The committee further believes that it is unfair and inappropriate to treat as luxury purchases those accessories or modifications which must be purchased by an individual with a disability to enable him or her to operate or to enter or exit a vehicle.

The committee further believes it is more appropriate to tax demonstrator cars when they are sold instead of when a dealer begins to use them as them as a demonstrator.

EXPLANATION OF PROVISION

Repeal of luxury tax on boats, aircraft, jewelry, and fur

The bill repeals the luxury excise tax imposed on boats, aircraft, jewelry, and furs.

Indexing of tax on automobiles

The bill modifies the luxury excise tax on automobiles to provide that the $30,000 threshold is indexed annually for inflation occurring after 1990. Consequently, the applicable threshold for 1993 will be $30,000 increased by the 1991 and 1992 inflation rate.

Exemption for certain equipment installed on passenger vehicles for use by disabled individuals

The bill provides that the luxury excise tax does not apply to a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, in order to compensate for the effect of the disability. This exception does not apply to accessories commonly available from the manufacturer or dealer, such as power steering, power door locks, power seats, or power windows.

Exemption for demonstrator vehicles

The bill exempts passenger vehicle dealers from paying the luxury tax on vehicles used as demonstrators for potential customers. Under the provision, the tax, if any, is to be assessed and paid on the sales price of the vehicle when the vehicle is sold.

EFFECTIVE DATE

The repeal of the luxury excise taxes on boats, aircraft, jewelry, and furs is effective for sales on or after January 1, 1993. The indexation of the threshold applicable to passenger vehicles is effective for sales on or after January 1, 1993. The provision

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relating to the purchase of accessories or modifications by disabled persons is effective for purchases after December 31, 1990. The provision relating to the use before sale of demonstrator vehicles is effective for vehicles used after December 31, 1992.

Persons entitled to a refund may request it from the seller from whom the taxed item was purchased. The seller then obtains the refund as provided under present-law Code section 6416.

****859*628** 2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 14163 of the bill and secs. 4092, 4041, 6421, 9503, and 9508 of the Code)

PRESENT LAW

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by certain off-highway recreational trail vehicles and by motorboats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cents per gallon) used in highway transportation. Diesel fuel used in trains is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus the 2.5 cents per gallon General Fund rate are deposited in the Highway Trust Fund, the National Recreational Trails Trust Fund, or the Aquatic Resources Trust Fund through September 30, 1999. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5-cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire. (A separate committee provision extends the 2.5-cents-per-gallon rate through September 30, 1999, and transfers applicable highway-related revenues to the Highway Trust Fund for the extended period.)

An additional 0.1-cents-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund, generally through December 31, 1995.

Diesel fuel used in motorboats is not currently taxed.

REASONS FOR CHANGE

The bill eliminates the discrepancy between gasoline used by motorboats (which is taxable) and diesel fuel used by similar boats (which is not taxable).

EXPLANATION OF PROVISION

The bill extends the current 20.1-cents-per-gallon diesel fuel excise taxes to diesel fuel used by noncommercial motorboats. Fuel used by boats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, remains exempt.

The tax is collected at the same point in the distribution chain as the highway diesel fuel tax.[11]

The revenues from the 20.1-cents-per-gallon tax on diesel fuel used by motorboats will be retained in the General Fund.

EFFECTIVE DATE

The provision is effective after December 31, 1993.

****860*629** F. OTHER PROVISIONS

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1. Permanent extension of AMT treatment of gifts of appreciated property (sec. 14171 of the bill and secs. 56 and 57 of the Code)

PRESENT LAW

Donations of appreciated property

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[12] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction is limited to the taxpayer's basis in the property.[13] In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

For taxable years beginning after 1989, the AMTI of a corporation is increased by 75 percent of the amount by which adjusted current earnings (ACE) exceeds AMTI (calculated before this adjustment). ACE generally is computed pursuant to the rules that a corporation uses to determine its earnings and profits (sec. 56(g)).

Valuation procedures

Present law and current IRS practice do not provide for a procedure by which a taxpayer may seek determination of the IRS' position with respect to the value of property prior to the taxpayer donating the property to a charitable organization. However, if a taxpayer claims a charitable contribution deduction for a noncash gift in excess of $5,000 per item or group of similar items (other than certain publicly traded securities), the taxpayer must attach to his income tax return a separate form (Form 8283), which provides specific information on the donated property and which is signed by a qualified appraiser.[14]

****861*630** REASONS FOR CHANGE

The committee believes that the temporary AMT exception for contributions of appreciated property induced additional charitable giving. Thus, by permanently extending this rule and expanding it to apply to all appreciated property gifts, taxpayers will be allowed the same charitable contribution deduction for both regular tax and AMT purposes. This will provide an additional incentive for taxpayers to make charitable contributions of appreciated property.

In addition, to reduce uncertainty and disputes arising from charitable contributions of property, the committee believes that the Treasury Department should develop a proposed procedure under which the Secretary's position as to the value of tangible personal property can be ascertained for Federal income tax purposes prior to the donation of such property to a charity.

EXPLANATION OF PROVISIONS

Permanent AMT relief for donated appreciated property

The bill eliminates the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for AMT purposes. In addition, the bill provides that no adjustment related to the earnings and profits effects of any

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charitable contribution shall be made in computing the ACE component of the corporate AMT.

Thus, the difference between the fair market value of donated appreciated property and the adjusted basis of such property is not treated as a tax preference item for alternative minimum tax (AMT) purposes. If a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair market value (subject to present-law percentage limitations).[15]

Treasury report on advance valuation procedure

Not later than one year after the date of enactment of the bill, the Secretary of the Treasury is required to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance, reporting on the development of a procedure under which a taxpayer could elect to seek an agreement with the Secretary as to the value of tangible personal property prior to the donation of such property to a qualifying charitable organization (provided that time limits for donation and any other conditions contained in the agreement are satisfied). The report should address the setting of possible threshold amounts for claimed value (and the payment of fees by a taxpayer) in order for a taxpayer to seek agreement under the procedure, possible limitations on applying the procedure only to items with significant artistic or cultural ****862*631** value, and recommendations for legislative action needed to implement the procedure.

EFFECTIVE DATE

The provision governing the AMT treatment of gifts of appreciated property is effective for contributions of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.

The Treasury Department must report to Congress not later than one year after enactment on the development of an advance valuation procedure.

2. Permanent extension of General fund transfer to Railroad Retirement Tier 2 Fund (sec. 14172 of the bill)

PRESENT LAW

A portion of the railroad retirement tier 2 benefits are included in gross income of recipients (similar to the treatment accorded recipients of private pensions) for Federal income tax purposes. The proceeds from the income taxation of railroad retirement tier 2 benefits received prior to October 1, 1992, have been transferred from the General Fund of the Treasury to the railroad retirement account. Proceeds from the income taxation of benefits received after September 30, 1992 remain in the General Fund.

REASONS FOR CHANGE

It is appropriate to make permanent the transfer of funds from the general fund of the Treasury to the railroad retirement account to promote the on-going solvency of the railroad retirement system.

EXPLANATION OF PROVISION

The transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the general fund of the Treasury to the railroad retirement account is made permanent.

EFFECTIVE DATE

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The provision is effective for income taxes on benefits received after September 30, 1992.

3. Temporary extension of health insurance deduction for self-employed individuals (sec. 14173 of the bill and sec. 162(l) of the Code)

PRESENT LAW

Under present law, an incorporated business can generally deduct, as an employee compensation expense, the full cost of any health insurance coverage provided for its employees (including owners serving as employees) and its employees' spouses and dependents. Self-employed individuals can fully deduct the cost of health insurance for employees as employee compensation, but can only deduct the cost of health insurance coverage for the individual and his or her dependents to the extent that the cost of the coverage, ****863*632** together with other allowable medical expenses, exceeds 7.5 percent of adjusted gross income. Other individuals (e.g., employees who are not covered by an employer-sponsored plan) who purchase health insurance can deduct the cost of the insurance only to the extent that it, together with their other medical expenses, exceeds 7.5 percent of adjusted gross income.

For coverage prior to July 1, 1992, a self-employed individual was allowed to deduct as a business expense up to 25 percent of the amount paid for health insurance coverage for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Only amounts paid prior to July 1, 1992, for coverage before that date were eligible for the deduction. The deduction was not allowed if the self-employed individual or his or her spouse was eligible for employer-paid health benefits.

REASONS FOR CHANGE

The 25-percent deduction for health insurance costs of self-employed individuals was added by the Tax Reform Act of 1986 to reduce the disparity between the tax treatment of owners of incorporated and unincorporated businesses. The provision was originally enacted on a temporary basis and has been extended several times since enactment.

The committee believes it is appropriate to extend the 25-percent deduction retroactively and to extend it prospectively again on a temporary basis. The provision is not extended for a longer period at this time because it is expected that the deduction will be addressed as part of forthcoming comprehensive health care legislation.

EXPLANATION OF PROVISION

The 25-percent deduction is extended retroactively from July 1, 1992, through December 31, 1993. In addition, the bill provides that the determination of whether a self-employed individual or his or her spouse are eligible for employer-paid health benefits is made on a monthly basis.

EFFECTIVE DATE

The provision is effective for taxable years ending after June 30, 1992.

****864*633** II. REVENUE-RAISING PROVISIONS

A. INDIVIDUAL INCOME AND ESTATE AND GIFT TAX PROVISIONS

1. Increased tax rates for higher income individuals (secs. 14201–14205 of the bill and secs. 1, 55, 68, and 151 of the Code)

PRESENT LAW

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Regular tax rates

For 1993, the individual income tax rates are as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The individual income tax brackets are indexed each year for inflation.

Alternative minimum tax

An individual taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular tax liability. A taxpayer's tentative minimum tax generally equals 24 percent of alternative minimum taxable income (AMTI) in excess of an exemption amount. The exemption amount is $40,000 for married taxpayers filing joint returns, $30,000 for unmarried taxpayers filing as single or head of household, and $20,000 for married taxpayers filing separate returns, estates, and trusts. The exemption amount is phased out for taxpayers with AMTI above specified thresholds. These thresholds are: $150,000 for married taxpayers filing joint returns, $112,500 ****865*634** for unmarried taxpayers filing as single or head of household, and $75,000 for married taxpayers filing separate returns, estates, and trusts. The exemption is completely phased out for individuals with AMTI above $310,000 (married taxpayers filing joint returns) or $232,500 (unmarried taxpayers filing as single or head of household).

Surtax on higher-income taxpayers

Under present law, there is no surtax imposed on higher-income individuals.

Itemized deduction limitation

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, unreimbursed casualty and theft losses, charitable contributions, qualified residence interest, State and local income and property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of these expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness, unreimbursed casualty or theft losses are deductible only to the extent that the amount of loss arising from each casualty or theft exceeds $100 and only to the extent that the net amount of casualty and theft losses exceeds 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous expenses are deductible only to the extent that the total of these expenses exceeds 2 percent of the taxpayer's AGI.

The total amount of otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) is reduced by 3 percent of the amount of the taxpayer's AGI in excess of $108,450 in 1993 (indexed for inflation). Under this provision, otherwise allowable itemized deductions may not be reduced by more than 80 percent. In computing the reduction of total itemized deductions, all present-law limitations applicable to such deductions are first applied and then the otherwise allowable total amount of deductions is reduced in accordance with this provision.

The reduction of otherwise allowable itemized deductions does not apply to taxable years beginning after December 31, 1995.

Personal exemption phaseout

Present law permits a personal exemption deduction from gross income for an individual, the individual's spouse, and each dependent. For 1993, the amount of this deduction is $2,350 for each exemption claimed. This exemption amount is adjusted for inflation. The deduction for personal exemptions is phased out for taxpayers with AGI above a threshold amount (indexed

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for inflation) which is based on filing status. For 1993, the threshold amounts are ****866*635** $162,700 for married taxpayers filing joint returns, $81,350 for married taxpayers filing separate returns, $135,600 for unmarried taxpayers filing as head of household, and $108,450 for unmarried taxpayers filing as single.

The total amount of exemptions that may be claimed by a taxpayer is reduced by 2 percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold (the phaseout rate is 2 percent for each $1,250 for married taxpayers filing separate returns). Thus, the personal exemptions claimed are phased out over a $122,500 range (which is not indexed for inflation), beginning at the applicable threshold.

This provision does not apply to taxable years beginning after December 31, 1996.

REASONS FOR CHANGE

To raise revenue to reduce the Federal deficit, to improve tax equity, and to make the individual income tax system more progressive, the committee believes that a higher marginal tax rate should be imposed on taxpayers with a greater ability to pay taxes. Additionally, the progressivity of the individual income tax system would be enhanced by creating a two-tier alternative minimum tax schedule for individual taxpayers and by permanently extending the existing limitation on itemized deductions and the phaseout of personal exemptions for higher-income taxpayers.

EXPLANATION OF PROVISION

New marginal tax rates

The bill imposes a new 36-percent marginal tax rate on taxable income in excess of the following thresholds:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

For estates and trusts, the 15-percent rate will apply to income up to $1,500, the 28-percent rate will apply to income between $1,500 and $3,500, and the 31-percent rate will apply to income between $3,500 and $5,500. Under this modified tax rate schedule for estates and trusts, the benefits of the rates below the 39.6-percent surtax-included rate (described below) for 1993 will approximate the benefits of the 15- and 28-percent rates for 1993 under present law.

As under present law, the tax rate bracket thresholds are indexed for inflation. However, indexing of thresholds for the 36-percent rate will apply to taxable years beginning after December 31, 1994.

Alternative minimum tax

The bill provides a two-tiered graduated rate schedule for the AMT for taxpayers other than corporations. A 26-percent rate will apply to the first $175,000 of a taxpayer's AMTI in excess of the exemption amount, and a 28-percent rate will apply to AMTI more ****867*636** than $175,000 above the exemption amount. For married individuals filing separate returns, the 28-percent rate will apply to AMTI more than $87,500 above the exemption amount. The bill will increase the exemption amount to $45,000 for married individuals filing joint returns, to $33,750 for unmarried individuals, and to $22,500 for married individuals filing separate returns, estates, and trusts.

Surtax on higher-income taxpayers

The bill provides a 10-percent surtax on individuals with taxable income in excess of $250,000 and on estates and trusts with taxable income in excess of $7,500. For married taxpayers filing separate returns, the threshold amount for the surtax will be $125,000. The surtax will be computed by applying a 39.6-percent rate to taxable income in excess of the applicable threshold. Under this method of computation, unlike a simple 10-percent increase in tax liability, capital gains income will not be subject to tax at a rate in excess of the current 28-percent maximum rate. The thresholds for the surtax will be indexed for inflation in the same manner as other individual income tax rate thresholds for taxable years beginning after December

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31, 1994.

Itemized deduction limitation and phaseout of personal exemptions

The bill makes permanent the provisions that limit itemized deductions and phase out personal exemptions.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1992. Withholding tables for 1993 will not be revised to reflect the changes in tax rates. Penalties for the underpayment of estimated taxes will be waived for underpayments of 1993 taxes attributable to these changes in tax rates.

2. Provisions to prevent conversion of ordinary income to capital gain (sec. 14206 of the bill)

a. Recharacterization of capital gain as ordinary income for certain financial transactions (sec. 14206(a) of the bill and sec. 1258 of the Code)

PRESENT LAW

Under present law, the maximum rate of individual income tax on ordinary income is 31 percent. Interest from a loan generally is treated as ordinary income.

Gain or loss from the sale or exchange of a capital asset generally is treated as capital gain or loss. Net capital gain (i.e., net long-term capital gain less net short-term capital loss) of an individual is subject to a maximum tax rate of 28 percent. Generally, capital losses are not deductible against ordinary income.

REASONS FOR CHANGE

The committee is aware that taxpayers are able to enter into transactions the economic substance of which is indistinguishable ****868*637** from loans in terms of the return anticipated and the risks borne by the taxpayer. However, because of their form, these transactions may permit the taxpayer to take the position for tax purposes that his return is capital gain rather than ordinary income. The committee is concerned that, because of the increased differential between the rates of tax on ordinary income and capital gain that results from this bill, taxpayers may enter into such transactions for purposes of avoiding the intended higher rates on ordinary income. Accordingly, the committee believes that providing rules that would treat gain from such transactions as ordinary income is appropriate.

EXPLANATION OF PROVISION

Under the provision, capital gain from the disposition of property that was part of a "conversion transaction" would be recharacterized as ordinary income,[16] with certain limitations discussed below. No inference is intended as to when income from a conversion transaction is properly treated as capital gain under present law.

A conversion transaction is a transaction, generally consisting of two or more positions taken with regard to the same or similar property, where substantially all of the taxpayer's return is attributable to the time value of the taxpayer's net investment in the transaction. In a conversion transaction, the taxpayer is in the economic position of a lender–he has an expectation of a return from the transaction which in substance is in the nature of interest and he undertakes no significant risks other than those typical of a lender. However, a transaction is not a conversion transaction subject to the provision unless it also satisfies one of the following four criteria: (1) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future; (2)

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the transaction is a straddle, within the meaning of section 1092;[17] (3) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or (4) the transaction is described as a conversion transaction in regulations promulgated by the Secretary of the Treasury.

Under the provision, gain realized by a taxpayer from a conversion transaction that would otherwise be treated as capital gain will be treated as ordinary income (but not as interest) for all purposes of the Internal Revenue Code. The amount of gain so recharacterized will not exceed the amount of interest that would have accrued on the taxpayer's net investment for the relevant period at a yield equal to 120% of the "applicable rate". This limit is subject to appropriate reduction to reflect prior inclusion of ordinary income items from the conversion transaction or the capitalization of interest on acquisition indebtedness under section 263(g). The "applicable rate" is the applicable Federal rate under section ****869*638** 1274(d) at the time the taxpayer enters into the conversion transaction (if the conversion transaction has a definite term) or the Federal short term rate determined under section 6621(b) (if the conversion transaction has an indefinite term).

For example, assume that X purchases stock for $100 on January 1, 1994, and on that same day agrees to sell it to Y on January 1, 1996 for $115. Assume that the applicable rate is 5%.[18] On January 1, 1996, X delivers the stock to Y in exchange for $115 in satisfaction of their agreement. Assume that under current law X would have recognized a capital gain of $15. Under the provision, $12.36 of that amount would be recharacterized as ordinary income (i.e, 120% of 5% compounded for two years, applied to an investment of $100).

In determining a taxpayer's net investment in a conversion transaction, the source of the taxpayer's funds generally will not be taken into account. Assume in the above example that X borrowed $90 of the purchase price of the stock from a bank and was required under section 263(g) to capitalize $10 of interest on that debt into the cost of the stock. Then X's net investment in the transaction will still be $100, even though X's basis is $110 to reflect the capitalized $10 of interest. However, of the gain of $5, only $2.36 will be recharacterized as ordinary income under the provision. This is because the limitation amount of $12.36 will be reduced by the $10 of capitalized interest.

A special rule is included for situations in which the taxpayer has a built-in loss with respect to property that becomes part of a conversion transaction. Assume that, prior to January 1, 1994, X had purchased the stock in the previous example for $150, and had used that stock as part of a conversion transaction entered into on January 1, 1994, when the stock's value had declined to $100. Under these facts, the stock would be treated as having a $100 basis for purposes of this provision, and the results would be the same as in the example, except that X would also recognize the $50 built-in loss when the asset was delivered to Y. The character of that $50 loss would not be affected by this provision.

Amounts that a taxpayer may be committed to provide in the future generally will not be treated as an investment until such time as such amounts are committed to the transaction and unavailable to the taxpayer to invest in other ways. For example, assume that on January 1, 1994, X enters into a long futures contract committing X to purchase a certain quantity of gold on March 1 for $1,000. Also on January 1, 1994, X enters into a short futures contract to sell the same quantity of gold on April 1 for $1,006. Under these contracts, X is not required to make any investment at the time they are entered into, but is required to make a "margin" deposit (which may or may not bear interest), as security for his obligations thereunder. Suppose X terminates both contracts on February 1 for a net profit of $2. No part of that $2 is subject to recharacterization under this provision, since X has no investment in the transaction on which the $2 could be considered to be an interest equivalent return.

****870*639** A taxpayer's net investment in a conversion transaction generally will be the aggregate amount invested by the taxpayer in the conversion transaction less any amount received by the taxpayer as consideration for entering into any position held as part of the conversion transaction, such as when the taxpayer is the grantor of an option. For example, suppose that on January 1, 1994, X acquires publicly-traded common stock for $100 and, on the same day grants Y a call option on the same stock for $106, exercisable any time prior to February 1, 1995. Y pays X a premium of $10 for the call option. At the time X grants Y the call option, there is no substantial certainty that Y will exercise the option. Under these facts, X's net investment in the transaction comprised of the stock purchase and the granting of the option would be $90 (i.e., the $100 paid for the stock minus the $10 received for granting the option). X's return on that investment will be $16 if Y exercises the call option (the excess of $106 of sales proceeds over the net investment of $90). However, if Y does not exercise the option, X's return will be the difference between $90 and the value of the stock on February 1, 1995. The

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transaction consisting of the stock purchase and the grant of the option is one in which X takes on a risk not typical of a lender and is not a conversion transaction.

EFFECTIVE DATE

The provision is effective for conversion transactions entered into after April 30, 1993.

b. Repeal of certain exceptions to the market discount rules (sec. 14206(b) of the bill and secs. 1276, 1277, 1278 of the Code)

PRESENT LAW

Generally, a market discount bond is a bond that is acquired for a price that is less than the principal amount of the bond.[19] Market discount generally arises when the value of a debt obligation declines after issuance (typically, because of an increase in prevailing interest rates or a decline in the credit-worthiness of the borrower).

Gain on the disposition of a market discount bond generally must be recognized as ordinary income to the extent of the market discount that has accrued. This ordinary income rule, however, does not apply to tax-exempt obligations or to market discount bonds issued on or before July 18, 1984. Under current law, income attributable to accrued market discount on tax-exempt bonds is not tax-exempt but is taxable as capital gain if the bond is held as a capital asset.

REASONS FOR CHANGE

The committee is concerned about taxpayers being able to purchase market discount bonds as a means of converting returns on investments that are in the nature of interest on debt to capital gains. The committee therefore believes that the market discount ****871*640** rule should apply to tax-exempt bonds and to all taxable bonds, regardless of whether they were issued after July 18, 1984.

EXPLANATION OF PROVISION

The bill extends the ordinary income rule to tax-exempt obligations and to market discount bonds issued on or before July 18, 1984. Thus, gain on the disposition of a tax-exempt obligation or any other market discount bond that is acquired for a price that is less than the principal amount of the bond generally will be treated as ordinary income (instead of capital gain) to the extent of accrued market discount.

EFFECTIVE DATE

The provision is effective for bonds purchased after April 30, 1993. Thus, current owners of tax-exempt bonds and other market discount bonds issued on or before July 18, 1984, will not be required to treat accrued market discount as ordinary income, if they acquired their bonds before May 1, 1993.

c. Accrual of income by holders of stripped preferred stock (sec. 14206(c) of the bill and sec. 305 of the Code)

PRESENT LAW

In general, if a bond is issued at a price approximately equal to its redemption price at maturity, the expected return to the holder of the bond is in the form of periodic interest payments. In the case of original issue discount ("OID") bonds, however, the issue price is below the redemption price, and the holder receives part or all of his expected return in the form of price appreciation. The difference between the issue price and the redemption price is the OID, and a portion of the OID is required to be accrued and included in the income of the holder annually. Similarly, for certain preferred stock that is issued at a

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discount from its redemption price, a portion of the redemption premium must be included in income annually.

A stripped bond (i.e., a bond issued with interest coupons some of which are subsequently "stripped" so that the ownership of the bond is separated from the ownership of the interest coupons) generally is treated as a bond issued with OID equal to (1) the stated redemption price of the bond at maturity minus (2) the amount paid for the stripped bond.

If preferred stock is stripped of some of its dividend rights, however, the stripped stock is not subject to the rules that apply to stripped bonds or to the rules that apply to bonds and certain preferred stock issued at a discount.

REASONS FOR CHANGE

The committee believes that the purchaser of stripped preferred stock may, in effect, be purchasing at a discount the right to a fixed amount payable at a future date. The committee is concerned that taxpayers may purchase stripped preferred stock as a means of converting ordinary income to capital gains. Therefore, under these ****872*641** circumstances, the committee believes that the rules that apply to stripped bonds provide the appropriate tax treatment.

EXPLANATION OF PROVISION

The bill treats the purchaser of stripped preferred stock (and a person who strips preferred stock and disposes of the stripped dividend rights) in generally the same way that the purchaser of a stripped bond would be treated under the OID rules. Thus, stripped stock is treated like a bond issued with OID equal to (1) the stated redemption price of the stock minus (2) the amount paid for the stock. The discount accrued under the provision is treated as ordinary income and not as interest or dividends.

Stripped preferred stock is defined as any preferred stock where the ownership of the stock has been separated from the right to receive any dividend that has not yet become payable. The provision applies to stock that is limited and preferred as to dividends, does not participate in corporate growth to any significant extent, and has a fixed redemption price.

No inference is intended as to the treatment of stripped preferred stock for tax purposes with respect to any issues not directly addressed by this legislation, including the availability of the dividends received deduction to a holder of dividends stripped from preferred stock, the allocation of basis by the creator of stripped preferred stock, or the proper characterization of a purported sale of stripped dividend rights.

EFFECTIVE DATE

The bill is effective for stripped stock that is purchased after April 30, 1993.

d. Treatment of net capital gains as investment income (sec. 14206(d) of the bill and sec. 163(d) of the Code)

PRESENT LAW

In the case of a taxpayer other than a corporation, deductions for interest on indebtedness that is allocable to property held for investment ("investment interest") are limited to the taxpayer's net investment income for the taxable year. Disallowed investment interest is carried forward to the next taxable year. Investment income includes gross income (other than gain on disposition) from property held for investment and any net gain attributable to the disposition of property held for investment.

Investment interest that is allowable is deductible against income taxable at ordinary income rates. The net capital gain (i.e., net long-term capital gain less net short-term capital loss) of a noncorporate taxpayer is taxed at a maximum rate of 28 percent.

Prior to 1986, when a significant rate differential existed between long-term capital gains and ordinary income, long-term

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capital gains were not included in investment income for purposes of computing the investment interest limitation.

****873*642** REASONS FOR CHANGE

The committee believes it is inappropriate for a taxpayer who recognizes long term capital gain taxable at favorable rate to be able to use that gain to deduct otherwise non-deductible investment interest against ordinary income. Because the bill increases the rate differential between ordinary income and the net capital gains rate, the possibility of such inappropriate rate arbitrage is increased. The committee believes that the opportunities for this type of rate conversion should be reduced.

EXPLANATION OF PROVISION

The bill generally excludes net capital gain attributable to the disposition of property held for investment from investment income for purposes of computing the investment interest limitation. A taxpayer, however, can elect to include so much of his net capital gain in investment income as the taxpayer chooses if he also reduces the amount of net capital gain eligible for the 28-percent maximum capital gains rate by the same amount.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1992.

e. Definition of “substantially appreciated” inventory (sec. 14206(e) of the bill and sec. 751(d) of the Code)

PRESENT LAW

Under present law, amounts received by a partner in exchange for his interest in a partnership are treated as ordinary income to the extent they are attributable to substantially appreciated inventory of the partnership. In addition, distributions by a partnership in which a partner receives substantially appreciated inventory in exchange for his interest in certain other partnership property (or receives certain other property in exchange for substantially appreciated inventory) are treated as a taxable sale or exchange of property, rather than as a nontaxable distribution.

For these purposes, inventory is treated as substantially appreciated if the value of the partnership’s inventory exceeds both 120 percent of its adjusted basis and 10 percent of the value of all partnership property (other than money).

REASONS FOR CHANGE

The committee believes that the 10-percent exception creates opportunities for avoidance of the appreciated inventory rule through the manipulation of the partnership’s gross assets. The committee also believes that disregarding inventory that is acquired principally to avoid the appreciated inventory rule is necessary to prevent circumvention of the rule.

****874*643** EXPLANATION OF PROVISION

The bill eliminates the requirement that the partnership’s inventory exceed 10 percent of the value of all partnership property in order to be substantially appreciated. Thus, if the partnership’s inventory is worth more than 120 percent of its adjusted basis, the inventory is treated as substantially appreciated. In addition, any inventory property acquired with a principal purpose to reduce the appreciation to less than 120 percent in order to avoid ordinary income treatment will be disregarded in applying the 120-percent test.

EFFECTIVE DATE

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The provision applies to sales, exchanges, and distributions after April 30, 1993.

3. Repeal health insurance wage base cap (sec. 14207 of the bill and sec. 3121(x) of the Code)

PRESENT LAW

As part of the Federal Insurance Contributions Act (FICA), a tax is imposed on employees and employers up to a maximum amount of employee wages. The tax is comprised of two parts: old-age, survivor, and disability insurance (OASDI) and Medicare hospital insurance (HI). For wages paid in 1993 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $135,000 of wages and the OASDI tax rate is 6.2 percent on both the employer and the employee on the first $57,600 of wages.

Under the Self-Employment Contributions Act of 1954 (SECA), a tax is imposed on an individual's self-employment income. The self-employment tax rate is the same as the total rate for employers and employees (i.e., 2.9 percent for HI and 12.40 percent for OASDI). For 1993, the HI tax is applied to the first $135,000 of self-employment income and the OASDI tax is applied to the first $57,600 self-employment income. In general, the tax is reduced to the extent that the individual had wages for which employment taxes were withheld during the year.

The cap on wages and self-employment income subject to FICA and SECA taxes is indexed to changes in the average wages in the economy.

REASONS FOR CHANGE

The committee believes that eliminating the cap on wages and self-employment income subject to the HI tax will increase the progressivity of the tax system. In addition, the increased revenues will provide necessary funding for the Hospital Insurance Trust Fund and will enhance its long-term solvency.

EXPLANATION OF PROVISION

The bill repeals the dollar limit on wages and self-employment income subject to HI taxes.

****875*644** EFFECTIVE DATE

The provision is effective for wages and income received after December 31, 1993.

4. Reinstate top estate and gift tax rates at 53 percent and 55 percent (sec. 14208 of the bill and sec. 2001 of the Code)

PRESENT LAW

A Federal gift tax is imposed on transfers by gift during life and a Federal estate tax is imposed on transfers at death. The Federal estate and gift taxes are unified, so that a single graduated rate schedule is applied to an individual's cumulative gifts and bequests. For decedents dying (or gifts made) after 1992, the estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach a maximum of 50 percent on taxable transfers over $2.5 million. Previously, for the nine-year period beginning after 1983 and ending before 1993, two additional brackets applied at the top of the rate schedule: a rate of 53 percent on taxable transfers exceeding $2.5 million and below $3 million, and a maximum marginal tax rate of 55 percent on taxable transfers exceeding $3 million. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate (sec. 2641).

In order to phase out the benefit of the graduated brackets and unified credit, the estate and gift tax is increased by five

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percent on cumulative taxable transfers between $10 million and $18,340,000, for decedents dying and gifts made after 1992. (Prior to 1993, this phase out of the graduated rates and unified credit applied to cumulative taxable transfers between $10 million and $21,040,000.)

REASONS FOR CHANGE

To raise revenue to address the Federal deficit, to improve tax equity, and to make the tax system more progressive, the committee believes that the top two estate and gift tax rates which expired at the end of 1992 should be reinstated.

EXPLANATION OF PROVISION

The bill provides that, for taxable transfers over $2.5 million but not over $3 million, the estate and gift tax rate is 53 percent. For taxable transfers over $3 million, the estate and gift tax rate is 55 percent. The phase out of the graduated rates and unified credit applies with respect to cumulative taxable transfers between $10 million and $21,040,000. Also, since the generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate, the rate of tax on generation-skipping transfers under the bill is 55 percent.

EFFECTIVE DATE

The provision is effective for decedents dying, gifts made, and generation skipping transfers occurring after December 31, 1992.

****876*645** 5. Reduce deductible portion of business meals and entertainment expenses to 50 percent (sec. 14209 of the bill and sec. 274(n) of the Code)

PRESENT LAW

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business and, in the case of an individual, for the production of income. No deduction generally is allowed for personal, living, or family expenses.

Meal and entertainment expenses incurred for business or investment reasons are deductible if certain legal and substantiation requirements are met. The amount of the deduction generally is limited to 80 percent of the expense that meets these requirements. No deduction is allowed, however, for meal or beverage expenses that are lavish or extravagant under the circumstances.

REASONS FOR CHANGE

Generally, some portion of business meal and entertainment expenses represent personal consumption (even if the expenses serve a legitimate business purpose). The committee believes that denial of some part of the deduction is appropriate as a proxy for income inclusion of the consumption element of the meal or entertainment. The committee believes that increasing the portion of such expenses for which a deduction is denied is appropriate in the context of deficit-reduction legislation.

EXPLANATION OF PROVISION

The bill reduces the deductible portion of otherwise allowable business meals and entertainment expenses from 80 percent to 50 percent.

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EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

6. Deny deduction for club dues (sec. 14210 of the bill and sec. 274(a) of the Code)

PRESENT LAW

No deduction is permitted for club dues unless the taxpayer establishes that his or her use of the club was primarily for the furtherance of the taxpayer's trade or business and the specific expense was directly related to the active conduct of that trade or business (Code sec. 274(a)). No deduction is permitted for an initiation or similar fee that is payable only upon joining a club if the useful life of the fee extends over more than one year. Such initial fees are nondeductible capital expenditures.[20]

****877*646** REASONS FOR CHANGE

Under present law, taxpayers can obtain a tax deduction for dues for a club (such as a country club) with respect to which some element of personal pleasure and enjoyment is present. The committee believes that it is inappropriate to permit a deduction for such expenditures. Denying a deduction for club dues also simplifies present law, in that a strict nondeductibility rule is easier to comply with than the present-law rule requiring an assessment of the primary purpose of the use of the club.

EXPLANATION OF PROVISION

Under the bill, no deduction is permitted for club dues. This rule applies to all types of clubs (other than those exempted below), including business, social, athletic, luncheon, and sporting clubs. Specific business expenses (e.g., meals) incurred at a club are deductible only to the extent they otherwise satisfy the standards for deductibility.

Dues for airline and hotel clubs are not subject to the deduction disallowance.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

7. Deny deduction for executive pay over $1 million (sec. 14211 of the bill and sec. 162 of the Code)

PRESENT LAW

The gross income of an employee includes any compensation received for services rendered. An employer is allowed a corresponding deduction for reasonable salaries and other compensation. Whether compensation is reasonable is determined on a case-by-case basis. However, the reasonableness standard has been used primarily to limit payments by closely-held companies where nondeductible dividends may be disguised as deductible compensation.

REASONS FOR CHANGE

Recently, the amount of compensation received by corporate executives has been the subject of scrutiny and criticism. The committee believes that excessive compensation will be reduced if the deduction for compensation (other than performance-based compensation) paid to the top executives of publicly held corporations is limited to $1 million per year.

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EXPLANATION OF PROVISION

In general

Under the provision, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year.

****878*647** Definition of publicly held corporation

For this purpose, a corporation is treated as publicly held if the corporation has a class of common equity securities that is required to be registered under section 12 of the Securities Exchange Act of 1934. In general, the Securities Exchange Act requires a corporation to register its common equity securities under section 12 if (1) the securities are listed on a national securities exchange or (2) the corporation has $5 million or more of assets and 500 or more holders of such securities. A corporation is not considered to be publicly held under the bill if registration of its equity securities is voluntary, for example, if a corporation that otherwise is not required to register its equity securities but does so in order to take advantage of other procedures with regard to public offerings of debt securities.

Covered employees

Covered employees are defined by reference to the Securities and Exchange Commission (SEC) rules governing disclosure of executive compensation. Thus, with respect to a taxable year, a person is a covered employee if (1) as of the close the taxable year the employee is the chief executive officer of the corporation (or an individual acting in such capacity) or (2) the employee's total compensation is required to be reported for the taxable year under the Securities Exchange Act of 1934 because the employee is one of the four highest compensated officers for the taxable year (other than the chief executive officer).

Compensation subject to the deduction limitation

In general

Unless specifically excluded, the deduction limitation applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash. If an individual is a covered employee for a taxable year, the deduction limitation applies to all compensation not explicitly excluded from the deduction limitation, regardless of whether the compensation is for services as a covered employee. The $1 million cap is reduced by excess parachute payments (as defined in sec. 280G) that are not deductible by the corporation.

The deduction limitation applies when the deduction would otherwise be taken. Thus, for example, in the case of a nonqualified stock option, the deduction is normally taken in the year the option is exercised, even though the option was granted with respect to services performed in a prior year.[21]

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain independent director and shareholder approval requirements are met; (3) payments ****879*648** to a tax-qualified retirement plan (including salary reduction contributions), (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)), and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and which was not modified thereafter in any material respect before such remuneration was paid.

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Commissions

In order to qualify for the exception for compensation paid in the form of commissions, the commission must be payable solely on account of income generated directly by the individual performance of the executive receiving such compensation. Thus, for example, compensation that equals a percentage of sales made by the executive or a percentage of business that is directly attributable to the executive qualifies for the exception. Remuneration will not fail to be attributable directly to the executive merely because in generating the income the executive utilizes support services, such as secretarial or research services. However, if compensation is paid on account of broader performance standards, such as income produced by a business unit of the corporation, the compensation would not qualify for the exception because it would not be paid with regard to income that is directly attributable to the individual executive.

Other performance-based compensation

Compensation qualifies for the exception for performance-based compensation only if (1) it is paid solely on account of the attainment of one or more performance goals, (2) the performance goals are established by a compensation committee consisting solely of two or more independent directors, (3) the material terms under which the compensation is to be paid, including the performance goals, are disclosed to and approved by the shareholders in a separate vote prior to payment, and (4) prior to payment, the compensation committee certifies that the performance goals and any other material terms were in fact satisfied by the executive. Compensation does not qualify for the performance-based exception if the executive has a right to receive the compensation notwithstanding the failure of the compensation committee to certify attainment of the performance goal or without shareholder approval. It is intended that what constitutes a performance goal will be broadly defined, and will include, for example, any performance standard that is applied to the individual executive, a business unit (e.g., a division or a line of business), or the corporation as a whole.

Stock options or other stock appreciation rights generally are to be treated as meeting the exception for performance-based compensation, provided that the requirements for independent director and shareholder approval are met (without the need for certification that the performance standards have been met), because the amount of compensation paid to the executive is based on an increase in the corporation's stock price. This does not apply, however, to stock-based compensation that are dependent on factors other than corporate performance. For example, if a stock option is ****880*649** granted to an executive with an exercise price that is less than the current fair market value of the stock at the time of grant, then the executive has the right to receive compensation on the exercise of the option even if the stock price decreases or stays the same. Thus, stock options that are granted with an exercise price that is less than the fair market value of the stock at the time of grant do not meet the requirements for performance-based compensation. Similarly, if the executive is otherwise protected from decreases in the value of the stock (such as through repricing), the compensation is not performance-based.

In contrast to options or other stock appreciation rights, grants of restricted stock are not inherently performance-based because the executive may receive compensation even if the stock price decreases or stays the same. Thus, a grant of restricted stock is like cash compensation and it cannot satisfy the definition of performance-based compensation unless the grant or vesting of the restricted stock is based upon the attainment of a performance goal.

For purposes of this exemption, a director is considered independent if he or she is not a current employee of the corporation (or related entities), is not a former employer of the corporation (or related entities) who is receiving compensation for prior services, was not an officer of the corporation (or related entities) at any time, and is not currently receiving compensation for services in any capacity other than as a director (e.g., for services as a consultant).

In order to meet the shareholder approval requirement, the material terms under which the compensation is to be paid must be disclosed. In general, this means that the terms must be disclosed in such a manner so that a third party unfamiliar with the compensation arrangement could determine the maximum potential amount of compensation that could be paid or the formula under which such compensation could be paid. Thus, for example, disclosure to the shareholders would be adequate if the disclosure provided that an executive would receive $x of compensation when the corporation's return on equity exceeds a specified amount. If stock options are being granted, disclosure would be adequate if the shareholders were informed of the maximum number of shares to be awarded to the executive, the option price, and any other conditions or restrictions, including the period over which the options are exercisable, to be placed on the stock. In addition, disclosure would be adequate if the shareholders were informed that the executive will receive $y of compensation based upon the

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attainment of any one in a series of performance goals. In contrast, disclosure would not be adequate if the shareholders merely were informed that the compensation committee could award the executive $z at its discretion.

The shareholder approval requirement is met if, after disclosure of material terms, the compensation is approved by a majority of shares voting in a separate vote.

In the case of compensation paid pursuant to a plan, the shareholder approval requirement is satisfied if the shareholders approve the general terms of the plan and the class of executives to which it applies. Further shareholder approval of payments under the plan is not required after the plan has been approved. Of ****881*650** course, if there are material changes to the plan shareholder approval must be obtained again in order for the exception to apply to payments under the modified plan.

In the case of a privately held company that becomes publicly held, the prospectus is subject to the rules similar to those applicable to publicly held companies. Thus, in cases where there has been disclose that would satisfy the rules described above, persons who buy shares will be aware of existing compensation arrangements. No further shareholder approval is required of compensation arrangements existing prior to the time the company became public unless there is a material modification of such arrangements.

Compensation payable under a binding contract

The exception for remuneration paid pursuant to a binding written contract ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception applies only if there is a binding contract between the corporation and the covered employee. Thus, for example, the exception does not apply to payments made pursuant to an existing stock option plan in the case of executives who, on February 17, 1993, were not participants in the plan.

EFFECTIVE DATE

The provision applies to compensation that is otherwise deductible by the corporation in a taxable year beginning on or after January 1, 1994.

8. Reduce compensation taken into account for qualified retirement plan purposes (sec. 14212 of the bill and secs. 401(a)(17), 404(l), 408(k), and 505(b)(7) of the Code)

PRESENT LAW

Under present law, the amount of a participant's compensation that can be taken into account under a tax-qualified pension plan is limited (sec. 401(a)(17)). This limit on includible compensation is $235,840 for 1993, and is adjusted annually for inflation. The limit applies for determining the amount of the employer's deduction for contributions to the plan as well as for determining the amount of the participant's benefits.

REASON FOR CHANGE

The limit on compensation taken into account under a qualified pension plan was originally intended to ensure that reductions in the maximum contributions or benefits under a plan (for example, by reason of a reduction in the limit on contributions and benefits under a qualified plan) did not reduce the contributions or benefits of low- and middle-income employees. In practice, this limit serves as a useful backstop to the nondiscrimination requirements applicable to qualified plans. By limiting the compensation taken into account under a plan, an employer is deemed to be providing greater benefits as a percentage of pay to an employee with compensation in excess of the cap than would be the case if all of the employee's compensation were taken into account. The nondiscrimination ****882*651** rules then require that rank-and-file employees be entitled to benefits that are a larger percentage of their pay.

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The committee believes that the goal of reducing the extent to which employers discriminate in the provision of pension benefits in favor of highly compensated employees can be better served by reducing further the compensation taken into account under qualified plans.

EXPLANATION OF PROVISION

Under the provision, the limit on compensation taken into account under a qualified plan (sec. 401(a)(17)) is reduced to $150,000. As under present law, this limit is indexed for cost-of-living adjustments on an annual basis. Corresponding changes also are made to other provisions (secs. 404(l), 408(k)(3)(C), (6)(D)(ii), and (8), and 505(b)(7)) that take into account the section 401(a)(17) limit.

EFFECTIVE DATE

The provision is effective for benefits accruing in plan years beginning after December 31, 1993. Benefits accrued prior to the effective date for compensation in excess of the reduced limit are grandfathered.

9. Deduction for moving expenses for meals and real estate expenses (sec. 14213 of the bill and sec. 217 of the Code)

PRESENT LAW

An employee or self-employed individual may claim a deduction from gross income for certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217) if the taxpayer's new job is at least 35 miles further from his former residence than was his former job (or at least 35 miles from his former residence, if he has no former place of work). The deduction is not subject to the floor that generally limits a taxpayer's allowable miscellaneous itemized deductions to those amounts that exceed 2 percent of his adjusted gross income. Any amount received directly or indirectly by such individual as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82). The taxpayer may offset this income by deducting the moving expenses that would otherwise qualify as deductible items under section 217.

Deductible moving expenses are the expenses of transporting the taxpayer and members of his household, as well as his household goods and personal effects, from the old residence to the new residence; the cost of meals and lodging enroute; the expenses for pre-move househunting trips; temporary living expenses for up to 30 days in the general location of the new job; and certain expenses related to either the sale or settlement of a lease on the old residence or the purchase of or the acquisition of a lease on a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move househunting and temporary living expenses in the general location ***652** of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale or purchase of a residence or settlement or acquisition of a lease. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate returns, the maximum deductible amounts available to each are one-half the amounts otherwise allowed.

REASONS FOR CHANGE

The committee believes that the cost of meals incurred during a move are nondeductible personal expenses since the taxpayer would have eaten these meals at either location. In addition, the committee believes that the appropriate tax treatment for costs incurred for selling and buying a home is (1) a reduction in the amount realized upon the sale of the home and (2) an increase in the basis of the home purchased. Also, the committee believes that disallowing the moving expense deduction for the costs of settling old leases and acquiring new leases restores some fairness to the tax system since these expenses are nondeductible personal expenses for most taxpayers.

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EXPLANATION OF PROVISION

The provision excludes from the definition of moving expenses: (1) the costs of meals consumed while traveling and while living in temporary quarters near the new workplace, and (2) the costs of selling (or settling an unexpired lease on) the old residence and buying (or acquiring a lease on) the new residence.

EFFECTIVE DATE

The provision is effective for expenses incurred after December 31, 1993.

10. Modify estimated tax requirements for individuals (sec. 14214 of the bill and sec. 6654 of the Code)

PRESENT LAW

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. Income tax withholding from wages is considered to be a payment of estimated taxes. For estimated tax purposes, some trusts and estates are treated as individuals.

In addition, for taxable years beginning after 1991 and before 1997, a special rule provides the 100 percent of last year's liability safe harbor generally is not available to a taxpayer that (1) has a modified adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the preceding year by more than $40,000 ($20,000 in the case of a separate return by a married individual) ****884*653** and (2) has a modified AGI in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual).

REASONS FOR CHANGE

The committee believes that the application of the special rule that denies the use of the 100 percent of last year's liability safe harbor is unduly cumbersome. In order to simplify the calculation of estimated taxes for individuals, the special rule is replaced with a new, permanent safe harbor that applies to individuals with a preceding year AGI above a certain threshold.

EXPLANATION OF PROVISION

The special rule that denies the use of the 100 percent of last year's liability safe harbor is repealed for taxable years beginning after 1993. However, the 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year. For this purpose, the AGI of a trust or an estate is determined pursuant to rules similar to those in Code section 67(e).

For taxable years beginning after 1993, the bill does not change the availability of (1) the 100 percent of last year's liability safe harbor for an individual with a preceding year AGI of $150,000 or less, or (2) the present-law rule that allows any individual to base estimated tax payments on 90 percent of the tax shown on the return for the current year.

EFFECTIVE DATE

The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1993.

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11. Increase taxable portion of Social Security and Railroad Retirement Tier 1 benefits (sec. 14215 of the bill and sec. 86 of the Code)

PRESENT LAW

Under present law, a portion of Social Security and Railroad Retirement Tier 1 benefits are includible in gross income for taxpayers whose provisional incomes exceed a threshold amount. For purposes of this computation, a taxpayer's provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign source income) plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit. The threshold amount is $32,000 for married taxpayers filing joint returns, $25,000 for unmarried taxpayers, and $0 for married taxpayers filing separate returns. A taxpayer is required to include in gross income the lesser of: (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the applicable threshold amount.

****885*654** Proceeds from the income taxation of these benefits are credited quarterly to the Old-Age and Survivors Insurance Trust Fund, the Disability Insurance Trust Fund, or the Social Security Equivalent Benefit Account (of the Railroad Retirement system), as appropriate.

REASONS FOR CHANGE

The committee desires to more closely conform the income tax treatment of Social Security benefits and private pension benefits by increasing the maximum amount of Social Security benefits included in gross income for certain higher-income beneficiaries. Reducing the exclusion for Social Security benefits for these beneficiaries will enhance both the horizontal and vertical equity of the individual income tax system by treating all income in a more similar manner. To limit the effect of this provision to taxpayers with a greater ability to pay taxes, the present-law income thresholds are maintained. In addition, the committee believes that revenues attributable to the increased portion of Social Security benefits included in gross income should be retained in the General Fund.

EXPLANATION OF PROVISION

The bill provides that, for taxpayers with provisional incomes above the applicable thresholds, a taxpayer's gross income includes the lesser of: (1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 85 percent of the excess of the taxpayer's provisional income over the applicable present-law threshold amounts. A taxpayer's provisional income for purposes of this computation (modified adjusted gross income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit) will be calculated the same as under present law.

Proceeds from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income will be retained in the General Fund.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

B. BUSINESS PROVISIONS

1. Increase corporate tax rate for taxable income over $10 million (sec. 14221 of the bill and sec. 11 of the Code)

PRESENT LAW

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The highest marginal tax rate imposed on the taxable income of corporations is 34 percent. The maximum rate of tax on corporate net capital gain is also 34 percent. This rate applies to income in excess of $75,000. A 15-percent rate applies to taxable income not exceeding $50,000 and a 25-percent rate applies to taxable income over $50,000 and not exceeding $75,000. A corporation with taxable income in excess of $100,000 is required to increase its tax liability by the lesser of 5 percent of the excess or $11,750. This increase ****886*655** in tax phases out the benefits of the 15- and 25-percent rates for corporations with taxable income between $100,000 and $335,000; a corporation with taxable income in excess of $335,000, in effect, pays tax at a flat 34-percent rate.

REASONS FOR CHANGE

The committee believes that raising the top marginal tax rate for profitable corporations by one percentage point is an appropriate means to help reduce the budget deficits projected for the Federal Government.

EXPLANATION OF PROVISION

The bill provides a new 35-percent marginal tax rate on corporate taxable income in excess of $10 million. The maximum rate of tax on corporate net capital gains is also 35 percent.

A corporation with taxable income in excess of $15 million is required to increase its tax liability by the lesser of 3 percent of the excess or $100,000. This increase in tax recaptures the benefits of the 34-percent rate in a manner analogous to the recapture of the benefits of the 15- and 25-percent rates.

EFFECTIVE DATE

The 35-percent marginal rate is effective for taxable years beginning on or after January 1, 1993. Under existing law provisions regarding changes in tax rates during a taxpayer's taxable year (section 15 of the Code), a fiscal year corporation is required to use a "blended rate" for its fiscal year that includes January 1, 1993. Accordingly, the corporation's tax liability will be a weighted average of the tax resulting from applying the existing corporate rate schedule and the tax resulting from applying the changes described above, weighted by the number of days before and after January 1, 1993. Penalties for the underpayment of estimated taxes, however, are waived for underpayments of 1993 taxes attributable to the changes in tax rates.

2. Denial of deduction for lobbying expenses (sec. 14222 of the bill and sec. 162(e) and new sec. 60500 of the Code)

PRESENT LAW

Trade or business expenses

Taxpayers engaged in a trade or business generally are allowed a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on such trade or business (sec. 162). Present-law section 162(e)(1) specifically provides a deduction for certain so-called "direct lobbying" expenses (including travel expenses, costs of preparing testimony, and a portion of dues) paid in carrying on a trade or business if such expenses are (1) in direct connection with appearances before, submissions of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation ****887*656** of direct interest to the taxpayer, or (2) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization.[22]

Section 162(e)(2) provides, however, that no deduction is allowed for any amount paid (whether by contribution, gift, or otherwise) for participation or intervention in any political campaign (i.e., "political campaign" expenses) or if paid in

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connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums (i.e., "grass roots lobbying").

Treasury Department regulations further provide that if expenditures for lobbying purposes do not meet the requirements of section 162(e)(1), then such expenditures are not deductible as ordinary and necessary business expenses (Treas. Reg. sec. 1.162–20(c)(1)).[23] The regulations provide, however, that expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible, provided such expenditures are related to the patronage the taxpayer might reasonably expect in the future (Treas. Reg. sec. 1.162–20(a)(2)).[24]

Rules governing lobbying by tax-exempt organizations

Non-charitable tax-exempt organizations.–Although most tax-exempt organizations other than charitable organizations (e.g., social welfare organizations and trade associations) generally may engage in unlimited lobbying efforts, some restrictions do exist. If political campaign or grass roots lobbying activities constitute a substantial part of the activities of an organization, such as a labor union or a trade association, the portion of dues or other payments to the organization that is attributable to such activities cannot be deducted by the payor under section 162.

Charitable organizations.–A charitable organization otherwise described in section 501(c)(3) is not entitled to tax-exempt status under that section if a substantial part of its activities is "carrying on propaganda, or otherwise attempting, to influence legislation."[25] There is no statutory definition under section 501(c)(3) of "propaganda, or otherwise attempting, to influence legislation," but Treasury regulations provide that an organization will be regarded as "attempting to influence legislation" if it (1) contacts, or urges the public to contact, members of a legislative body for the purpose of ****888*657** proposing, supporting, or opposing legislation, or (2) advocates the adoption or rejection of legislation (meaning action by Congress or another legislative body). Treas. Reg. sec. 1.501(c)(3)–1(c)(3). However, an organization will not fail to meet the requirements of section 501(c)(3) merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation. Id. Moreover, conducting nonpartisan research (while not advocating legislative action) is not considered lobbying for purposes of the section 501(c)(3) restriction, nor is seeking to protect the organization's own existence or responding to a governmental request for testimony.[26]

For public charities making the section 501(h) election, permitted lobbying expenditures are measured against a specific arithmetical test.[27] Under section 501(h), "lobbying expenditures" are defined as "expenditures for the purpose of influencing legislation (as defined in section 4911(d))." Section 4911(d), in turn, defines the term "influencing legislation" as–

> "(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and
>
> "(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation."[28]

However, section 4911(d)(2) specifically excludes from the definition of "influencing legislation" the following activities:

(A) making available the results of nonpartisan analysis, study, or research;[29]

****889*658** (B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;[30]

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications which directly encourage members to contact a legislative body in an attempt to influence legislation, or which directly encourage members to urge persons other

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than members to attempt to affect the opinions of the general public or to contact a legislative body in an attempt to influence legislation; and

(E) any communication with a government official or employee, other than

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

Private foundations.–Private foundations (as distinguished from public charities) generally are subject to penalty excise taxes under section 4945 if they engage in any direct or grass roots lobbying, even if not substantial. For purposes of section 4945, lobbying is defined in a manner similar to the definition under section 4911(d). Specifically, the section 4945 penalty excise taxes do not apply to nonpartisan analysis, the provision of technical advice to a governmental body in response to a written request, or lobbying before a legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation (sec. 4945(e)).

****890*659** REASONS FOR CHANGE

The committee has determined that, in the context of deficit reduction legislation, it is appropriate to limit the business deduction for lobbying expenses.

EXPLANATION OF PROVISION

Under the bill, taxpayers may not deduct certain lobbying expenses under section 162. For purposes of this disallowance rule, lobbying expenses are defined as any amount paid or incurred in connection with any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.[31]

The disallowance rule applies to attempts to influence legislation through communications with the executive branch as well as the legislative branch of the Federal, or any State or local, government.[32] An exception to the general disallowance rule is provided to permit taxpayers to deduct expenditures for providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a specific written request by such governmental entity.[33] (However, the bill does not provide exceptions similar to the other exceptions of present-law section 4911(d)(2), such as the exception for nonpartisan analysis.)

The present-law disallowance of business deductions for expenses of grass roots lobbying and participation in political campaigns remains in effect under the bill.[34] Present-law rules which prevent charities from engaging in a substantial amount of lobbying also remain in effect.

The bill provides for a flow-through rule to disallow a deduction for a portion of the membership dues (or similar amounts)[35] paid ****891*660** to an organization which engages in political or lobbying activities. Under the bill, the disallowed portion of such payments will be the portion allocable to political or lobbying expenditures incurred by the organization.[36] As under present law, trade associations and similar organizations will not lose their tax-exempt status under the bill merely because they conduct lobbying activities. Trade associations and similar organizations are required to report to their members (and the IRS) the portion of membership dues (or similar payments) allocable to lobbying activities. However, the Secretary of the Treasury is granted authority to provide by regulation that this reporting requirement generally applicable to organizations will not apply where unnecessary to effectuate the purposes of the provision (e.g., where an organization incurs insubstantial lobbying expenses, or where the disallowed portion of such expenditures will not materially affect the tax liability of dues-paying members).

Organizations will be subject to penalties for failing to meet the reporting requirements of the provision. In addition to the

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normal reporting penalties (generally, $50 for each failure to report to the IRS or organization member), a special penalty applies if an organization materially underreports its lobbying expenses to its members (meaning the aggregate amount of nondeductible dues reported to members is less than 75 percent of the correct amount). This special penalty is equal to the amount of lobbying or political expenses not reported multiplied by the highest corporate tax rate (to approximate the amount of tax which would have been paid by the organization's members had they been notified of the disallowed amounts).

EFFECTIVE DATE

The provision is effective for amounts paid or incurred after December 31, 1993.

3. Mark-to-market accounting method for dealers in securities (sec. 14223 of the bill and new sec. 475 of the Code)

PRESENT LAW

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market (LCM) value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the LCM value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of ****892*661** securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

Under the so-called "wash sale rule," losses on the sale of securities are not allowed if the taxpayer acquires substantially identical securities within 30 days of the loss transaction. The wash sale rule does not apply to security dealers. Thus, a securities dealer that determines its inventory based on the cost of its securities may recognize losses on those securities that have built-in losses by selling the securities at year end, even if identical securities are acquired immediately to replenish the dealer's inventory.

REASONS FOR CHANGE

Inventories of securities generally are easily valued at year end, and, in fact, are currently valued at market by securities dealers in determining their income for financial statement purposes and in adjusting their inventory using the LCM method for Federal income tax purposes. The committee believes that the cost method and the LCM method generally understate the income of securities dealers and that the mark-to-market method most clearly reflects their income. Denial of the LCM method to securities dealers would have little effect because of the dealers' exemption from the wash sale rule. Consequently, the bill generally requires securities dealers to mark their securities inventories to market for Federal income tax purposes.

The committee also believes that hedges of securities that are subject to the bill should be treated in a manner similar to the hedged securities. Thus, the bill provides that such hedges are to be marked to market and any gain or loss with respect to such hedges will be treated as ordinary gain or loss.

EXPLANATION OF PROVISION

In general

The bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair

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market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.[37]

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss. In addition, the bill authorizes the Treasury ****893*662** Department to promulgate regulations that provide for the application of the second mark-to-market rule at times other than the close of a taxable year or the last business day of a taxable year.

The mark-to-market rules do not apply for purposes of determining the holding period of any security. In addition, the mark-to-market rules do not apply in determining whether gain or loss is recognized by any other taxpayer that may be a party to a contract with a dealer in securities.

Character of gain or loss

Any gain or loss taken into account under the provision (or any gain or loss recognized with respect to a security that would be subject to the provision if held at the end of the year) generally is treated as ordinary gain or loss. This character rule does not apply to any gain or loss allocable to any period during which the security (1) is a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule under the provision, or (2) is held by the taxpayer other than in its capacity as a dealer in securities. In addition, the character rule does not apply to any security that is improperly identified (as described in detail below) by the taxpayer.

No inference is intended as to the character of any gain or loss recognized in taxable years prior to the enactment of this provision or any gain or loss recognized with respect to any property to which this character rule does not apply.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely-held or publicly-traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in, any currency or in a security described in (1) through (4) above, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph.

A security, however, is not to include a contract to which section 1256(a) of the Code applies, unless such contract is a hedge of a ****894*663** security to which the provision applies. The special character rule of the bill (rather than the special character rule of section 1256(a)) will apply to any such contract that is a hedge of a security to which the bill applies.

A hedge is defined as any position that reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position that is reasonably expected to become a hedge within 60 days after the acquisition of the position.

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Exceptions to the mark-to-market rules

Notwithstanding the definition of security, the mark-to-market rules generally do not apply to: (1) any security that is held for investment;[38] (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business, but only if the evidence of indebtedness is not held for sale; (3) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to (a) a security held for investment, or (b) an evidence of indebtedness described in (2); and (4) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.[39] Whether or not a security or evidence of indebtedness is required to be marked-to-market under the applicable financial accounting rules is not dispositive for purposes of determining whether such security or evidence of indebtedness is treated as held for investment or as not held for sale under the provision.

To the extent provided in regulations to be promulgated by the Treasury Department, the exceptions to the mark-to-market rules for certain hedges do not apply to any security that is held by a taxpayer in its capacity as a dealer in securities. Thus, regulations may provide that the exceptions to the mark-to-market rules for certain hedges do not apply to securities that are entered into with customers in the ordinary course of a trade or business. In addition, a dealer may not treat a security that is identified as a hedge or as an investment as also held in its capacity as dealer. Thus, securities identified as qualifying for one of the exceptions to the mark-to-market rules may not be accounted for using the LCM or other inventory method of accounting.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations),[40] the security is clearly identified in the ****895*664** dealer's records as being described in one of the exceptions listed above.[41]

It is anticipated that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain dealers in securities use accounting systems which treat certain transactions entered into between separate business units as if such transactions were entered into with unrelated third parties. It is anticipated that for purposes of the mark-to-market rules, such an accounting system generally will provide an adequate identification of hedges with third parties.

In addition to clearly identifying a security as qualifying for one of the exceptions to the mark-to-market rules listed above, a dealer must continue to hold the security in a capacity that qualifies the security for one of the exceptions listed above. If at any time after the close of the day on which the security was acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is not held in a capacity that qualifies the security for one of the exceptions listed above, then the mark-to-market rules are to apply to any changes in value of such security that occur after the security no longer qualifies for an exception.[42]

Improper identification

The bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify ****896*665** a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

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In addition, a security subject to the provision is not to be treated as sold and reacquired for purposes of section 1091 of the Code. Section 1092 of the Code will apply to any loss recognized under the mark-to-market rules (but will have no effect if all the offsetting positions that make up the straddle are subject to the mark-to-market rules).

Furthermore, the bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the bill.

For purposes of the provision, fair market value generally is determined by valuing each security on an individual security basis. Thus, if a taxpayer holds a large block of securities of the same type, the securities should be valued without taking any blockage discount into account. It is expected that the Treasury Department will authorize the use of appropriate valuation methods that will alleviate unnecessary compliance burdens of taxpayers under the bill.

The bill also authorizes the Treasury Department to promulgate regulations which provide for the treatment of a hedge that reduce a dealer's risk of interest rate or price changes or currency fluctuations with respect to securities that are subject to the mark-to-market rules as well as with respect to securities, positions, rights to income, or liabilities that are not subject to the mark-to-market rules. It is anticipated that the Treasury regulations may allow taxpayers to treat any such hedge as not subject to the mark-to-market rules provided that such treatment is consistently followed from year to year.

Finally, the bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill, including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the bill. Such authority includes coordinating the mark-to-market rules with the original issue discount rules.

****897*666** Other hedging transactions

The bill provides that any gain or loss with respect to hedges that are subject to the mark-to-market rules of the bill will be treated as ordinary gain or loss.

The committee understands that hedging transactions are also important to the management of risks by businesses that are not subject to these mark-to-market rules. Hedging transactions are part of a sound business strategy in fields as diverse as farming, banking, manufacturing and energy production.

The committee also understands that there has been increased uncertainty concerning the tax treatment of hedging transactions following a decision by the Supreme Court in 1988, Arkansas Best Corp. v. Commissioner, 485 U.S. 212 (1988). That decision held that a taxpayer could not claim an ordinary loss from the sale of subsidiary stock that purportedly had been acquired for the purpose of preserving the business reputation of the taxpayer. The committee believes that decision has created significant uncertainty for taxpayers engaging in legitimate business hedging transactions.

The level of uncertainty regarding the tax treatment of hedging transactions is a matter of great concern to the committee for it is the consumer who pays for the lack of good risk management and for market uncertainty. The committee believes this is a significant issue. To the extent a solution may require coordination between the executive and legislative branches, the committee urges the Administration, in the strongest terms, to advise the committee, within 90 days of the enactment of this Act, how best to proceed.

EFFECTIVE DATE

In general

The provision applies to taxable years ending on or after December 31, 1993. A taxpayer that is required to change its

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method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change. The net amount of the section 481(a) adjustment is to be taken into account ratably over a 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

The principles of section 8.03(1) and (2) of Rev. Proc. 92–20, 1992–12 I.R.B. 10, are to apply to the section 481(a) adjustment. It is anticipated that section 8.03(1) of Rev. Proc. 92–20 will be applied by taking into account all securities of a dealer that are subject to the mark-to-market rules (including those securities that are not inventory in the hands of the dealer). In addition, it is anticipated that net operating losses will be allowed to offset the section 481(a) adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the section 481(a) adjustment, and, for purposes of determining liability for estimated taxes, the section 481(a) adjustment will be taken into account ratably throughout the taxable year in question.

In determining the amount of the section 481(a) adjustment for taxable years beginning before the date of enactment of the mark- ****898** to-market ***667** rules, the identification requirements are to be applied in a reasonable manner. It is anticipated that any security that was identified as being held for investment under section 1236(a) of the Code as of the last day of the taxable year preceding the taxable year of change is to be treated as held for investment for purposes of the mark-to-market rules. It is also anticipated that any other security that was held as of the last day of the taxable year preceding the taxable year of change is to be treated as properly identified if the dealer's records as of such date support such identification.[43]

Special rule for certain floor specialists and market makers

To the extent that a portion of the section 481(a) adjustment of a taxpayer is attributable to the use of the LIFO inventory method of accounting for any qualified security, such portion of the adjustment is taken into account ratably over the shorter of (1) a 20-taxable year period or (2) the number of years the taxpayer (or any predecessor) had utilized the LIFO inventory method for that security, beginning with the first taxable year ending on or after December 31, 1993. In no event may the period be less than 5 years. For this purpose, "qualified security" means any security acquired (1) by a floor specialist (as defined in section 1236(d)(2)) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange or (2) by a taxpayer who is a market maker in connection with the taxpayer's duties as market maker, but only if (a) the security is included on the National Association of Security Dealers Automated Quotation System, (b) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and (c) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or a predecessor of the taxpayer) has been actively engaged as a market maker in such security for a 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date.) The portion of the section 481(a) adjustment that is attributable to the use of the LIFO inventory method of accounting for any qualified security is determined under the rules described in section 312(n)(4) (without regard to the effective date of such section). In addition, the portion of the section 481(a) adjustment that is attributable to the use of the LIFO inventory method of accounting for qualified securities may not exceed the taxpayer's overall section 481(a) adjustment for all securities under the proposal.

****899*668** 4. Tax treatment of certain FSLIC financial assistance (sec. 14224 of the bill and secs. 165, 166, 585, and 593 of the Code)

PRESENT LAW AND BACKGROUND

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

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A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC),[44] and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by FIRREA, but still apply to transactions that occurred before May 10, 1989.

Prior to the enactment of FIRREA, the FSLIC entered into a number of assistance agreements in which it agreed to provide loss protection to acquirers of troubled thrift institutions by compensating them for the difference between the book value and sales proceeds of "covered assets." "Covered assets" typically are assets that were classified as nonperforming or troubled at the time of the assisted transaction but could include other assets as well. Many of these covered assets are also subject to yield maintenance guarantees, under which the FSLIC guaranteed the acquirer a minimum return or yield on the value of the assets. The assistance agreements also generally grant the FSLIC the right to purchase covered assets. In addition, many of the assistance agreements permit the FSLIC to order assisted institutions to write down the value of covered assets on their books to fair market value in exchange for a payment in the amount of the write-down.

Under most assistance agreements, one or more Special Reserve Accounts are established and maintained to account for the amount of FSLIC assistance owed by the FSLIC to the acquired entity. The assistance agreements generally specify the precise circumstances ****900*669** under which amounts with respect to covered assets are debited to an account. Under the assistance agreements, these debit entries generally are made subject to prior FSLIC direction or approval. When amounts are so debited, the FSLIC generally becomes obligated to pay the debited balance in the account to the acquirer at such times and subject to such offsets as are specified in the assistance agreement.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report ("Treasury report") on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance. The Treasury report states that the Treasury view is expected to be challenged in the courts and recommended that Congress enact clarifying legislation disallowing these deductions.[45]

REASONS FOR CHANGE

Allowing tax deductions for losses on covered assets that are compensated for by FSLIC assistance gives thrift institutions a perverse incentive to minimize the value of these assets when sold. The FSLIC, and not the institution, bears the economic burden corresponding to any reduction in value because it is required to reimburse the thrift institution for the loss. However, the tax benefit to the thrift institution and its affiliates increases as tax losses are enhanced. The thrift institution, therefore, has an incentive to minimize the value of covered assets in order to maximize its claimed tax loss and the attendant tax savings.

It is desirable to clarify, as of the date of the Treasury Report, that FSLIC assistance with respect to certain losses is taken into account as compensation for purposes of the loss and bad debt deduction provisions of the Code.

EXPLANATION OF PROVISION

General rule

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For this purpose,

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FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of ****901*670** the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).[46]

Thus, if a taxpayer disposes of an asset entitled to FSLIC assistance, no deduction is allowed under section 165 of the Code for a loss (if any) on the disposition of the asset to the extent the assistance agreement contemplates a right to receive FSLIC assistance with respect to the loss. Similarly, if a loan held by a taxpayer constitutes an asset entitled to FSLIC assistance, the thrift institution shall not charge off any amount of the loan covered by the assistance agreement against the bad debt reserve and no charge-off will be taken into account in computing an addition to the reserve under the experience method, to the extent the assistance agreement contemplates a right to receive FSLIC assistance on a write-down of such asset under the agreement or on a disposition. The institution also shall not be allowed to deduct such amount of the loan under the specific charge-off method.[47]

It is intended that the right to FSLIC assistance for purposes of this provision is to be determined by reference to the gross amount of FSLIC assistance that is contemplated by the assistance agreement with respect to the sale or other disposition, or write-down, without taking into account any offsets that might reduce the net amount FSLIC is obligated to pay under the agreement. For example, under an assistance agreement an institution's right to be reimbursed for a loss on the disposition or write-down of an asset may be reflected as a debit to a Special Reserve Account, while certain other items that will reduce the ultimate amount of assistance to be paid may be reflected as credits to the account. In such a case, the gross amount of FSLIC assistance contemplated by the agreement is the amount represented by the debit, without regard to any offset.

Financial assistance to which the FIRREA amendments apply

The provision does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference

No inference is intended as to prior law or as to the treatment of any item to which this provision does not apply.

EFFECTIVE DATE

In general

The provision applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the ****902*671** amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

For this purpose, financial assistance generally is considered to be credited when the taxpayer makes an approved debit entry to a Special Reserve Account required to be maintained under the assistance agreement to reflect the asset disposition or write-down. An amount will also be considered to be credited prior to March 4, 1991 if the asset was sold, with prior FSLIC approval, before that date.

An amount is not deemed to be credited for purposes of the provision merely because the FSLIC has approved a management or business plan or similar plan with respect to an asset or group of assets, or has otherwise generally approved a value with respect to an asset.

As an example of the application of the effective date of the provision, assume that a thrift institution is subject to a FSLIC assistance agreement that, through the use of a Special Reserve Account, operates to compensate the institution for the difference between the book and fair market values of certain covered assets upon their disposition or write-down. Further assume that on February 1, 1991 the thrift institution wrote down a covered asset that has a book value and tax basis of $100

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to $60, the asset's fair market value. With FSLIC approval, the institution debited the Special Reserve Account prior to March 4, 1991, to reflect the write-down of $40, and properly submitted to the FSLIC a summary of the account that reflected that debit, along with other debits for the quarter ended March 31, 1991. The provision would not apply to a loss claimed by the thrift institution with respect to the write-down of the covered asset on February 1, 1991. The same result would apply if the institution had sold the asset for $60 on February 1 with prior FSLIC approval. In the sale case, the provision would not apply even if there were no debit to the Special Reserve Account prior to March 4, 1991, so long as the FSLIC approved the amount of the reimbursable loss for purposes of providing assistance under the agreement.

Application to certain net operating losses

The provision applies to the determination of any net operating loss[48] carried into a taxable year ending on or after March 4, 1991, to the extent that the net operating loss is attributable to a loss or charge-off for which the taxpayer had a right to FSLIC assistance which had not been credited before March 4, 1991.

For example, assume a calendar year thrift institution is a party to a FSLIC assistance agreement that compensates the institution for the amount that covered loans are written down or charged off pursuant to the agreement. The agreement provides that the institution must receive the prior approval of the FSLIC to write down a loan for purposes of this compensation. Further assume that the institution uses the experience method to account for bad debts for tax purposes, and that in 1990 it charged off $100 with respect to a covered loan. Assume that this charge-off initially reduced the ****903*672** taxpayer's bad debt reserve balance by $100 and allowed the taxpayer to increase its addition to its reserve by $100 to bring the reserve to an appropriate balance. The taxpayer deducted this amount and utilized $20 for the year ended in 1990 (i.e., the last taxable year of the taxpayer ending before March 4, 1991). This produced a net operating loss of $80 for the remainder. The net operating loss is carried forward to 1991 (a taxable year of the taxpayer ending on or after March 4, 1991). Assume that the taxpayer did not debit the Special Reserve Account prior to March 4, 1991. The net operating loss carried to 1991 would be redetermined taking into account the provision. Applying the provision to 1990 would result in disallowing the charge-off of the $100 loan against the experience method reserve, in effect disallowing the $100 addition to the reserve. In such case, the taxpayer would continue to owe no tax for 1990, but the $80 net operating loss would be disallowed. However, the taxpayer's tax liability for 1990 would not be redetermined under the provision.

As a further example, assume that the net operating loss described in the example directly above were carried back to, and absorbed in, an earlier year ending prior to March 4, 1991 (rather than being carried forward). In that case, the provision would not apply to reduce the net operating loss carryback.

Estimated taxes

Finally, in accordance with the general estimated tax penalty provisions of the bill, no addition to tax is to be made under section 6654 or 6655 of the Code for any period before March 16, 1994 in the case of a corporation (April 16, 1994 in the case of an individual). However, in providing this relief, no inference is intended as to prior law, the effect of the provision on prior law, or the treatment of any item to which this provision does not apply.

5. Modification of corporate estimated tax rules (sec. 14225 of the bill and sec. 6655 of the Code)

PRESENT LAW

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning after June 30, 1992, and before 1997, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 97 percent of the tax liability shown on its return for the current taxable year. A corporation may estimate its current year tax liability prior to year-end by annualizing its income through the period ending with either the month or the quarter ending prior to the estimated tax payment due date. For taxable years beginning after 1996, the 97-percent requirement becomes a 91-percent requirement.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax

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payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year. A large corporation may also use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation ****904*673** is one that had taxable income of $1 million or more for any of the three preceding taxable years.

REASONS FOR CHANGE

The committee believes that corporate estimated tax requirements should be increased to require corporations to remit more timely their current year tax liabilities. In addition, the committee believes that in order to rationalize the calculation of annualized income for corporate estimated tax purposes, an additional set of annualization periods should be provided and applied consistently.

EXPLANATION OF PROVISION

In general

For taxable years beginning after December 31, 1993, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of the tax shown on its return for the current year, whether such tax is determined on an actual or annualized basis.

The bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

Annualization periods

In addition, the bill modifies the rules relating to income annualization for corporate estimated tax purposes. In general, the bill (1) adds a new, third set of periods over which corporations may elect to annualize income and (2) requires corporations to annually elect which of the three periods they will use to annualize income for the year.

Specifically, under the bill, annualized income is to be determined based on the corporation's income for the first 3 months of the taxable year (in the case of the first and second estimated tax installments); the first 6 months of the taxable year (in the case of the third estimated tax installment); and the first 9 months of the taxable year (in the case of the fourth estimated tax installment). Alternatively, a corporation may elect to determine its annualized income based on the corporation's income for either: (1) the first 2 months of the taxable year (in the case of the first estimated tax installment); the first 4 months of the taxable year (in the case of the second estimated tax installment); the first 7 months of the taxable year (in the case of the third estimated tax installment); and the first 10 months of the taxable year (in the case of the fourth estimated tax installment); or (2) the first 3 months of the taxable year (in the case of the first estimated tax installment); the first 5 months of the taxable year (in the case of the second estimated tax installment); the first 8 months of the taxable year (in the case of the third estimated tax installment); and the first 11 months of the taxable year (in the case of the fourth estimated tax installment). An election to use either of the annualized income patterns described in (1) or (2) above must be made on or before the due date of the first estimated tax installment ****905*674** for the taxable year for which the election is to apply, in a manner prescribed by the Secretary of the Treasury.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

6. Limitation on section 936 credit (sec. 14226 of the bill and secs. 56 and 936 of the Code)

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PRESENT LAW

Certain domestic corporations with business operations in the U.S. possessions (including, for this purpose, Puerto Rico and the U.S. Virgin Islands) may elect the use of the section 936 credit which generally eliminates the U.S. tax on certain income related to their operations in the possessions.[49] Income exempt from U.S. tax under this provision falls into two broad categories: business income, which in order to be exempt must be income treated as foreign source income derived from the active conduct of a trade or business within a U.S. possession or from the sale or exchange of substantially all of the assets that were used in such a trade or business; and investment income, which in order to be exempt must be derived from certain investments in the possessions or in certain Caribbean Basin countries. The investment income exempted under the provision is known as "qualified possession source investment income" (QPSII). For these and other purposes, income derived within a possession is encompassed within the term "foreign source income."

In order to qualify for the section 936 credit, a domestic corporation must satisfy two requirements. Under one requirement, the corporation must be treated as deriving at least 75 percent of its gross income from the active conduct of a trade or business within a possession over a three-year period. Under the other requirement, the corporation must be treated as deriving at least 80 percent of its gross income from sources within a possession during that same three-year period.

Three alternative rules are provided that relate to allocating income from intangible property between a domestic corporation that elects the section 936 credit (a "possession corporation") and its U.S. shareholders. The general rule is to prohibit the possession corporation from earning any return on intangible property. A possession corporation can instead elect to subject itself to one of two alternative rules, if it satisfies certain conditions.

One such rule is referred to as the "cost sharing method." Use of this method requires the possession corporation to pay to the appropriate members of its affiliated group of corporations (including foreign affiliates) an amount which represents its current share of the costs of the research and development expenses of the group. The Code determines that share to be the greater of (1) the total amount of the group's research and development expenses concerning ****906*675** the possession corporation's product area, multiplied by 110 percent of the proportion of its sales as compared to total product area sales of the group; or (2) the amount of the royalty payment or inclusion that would be required under sections 367(d) and 482 with respect to intangible assets which the possession corporation is treated as owning under the cost sharing method, were the possession corporation a foreign corporation (whether or not the intangible assets actually are transferred to the possession corporation). By making this cost sharing payment, the possession corporation becomes entitled to treat its income as including a return from certain intangibles, primarily manufacturing intangibles, associated with the products it manufactures in the possessions.

The alternative elective rule for allocating income from intangible property between a possession corporation and its U.S. affiliates is a "profit split" approach. This method generally permits allocation to the possession corporation of 50 percent of the affiliated group of U.S. corporations' combined taxable income derived from sales of products which are manufactured in a possession.[50]

Dividends paid by a possession corporation to a U.S. shareholder may qualify for the deduction for dividends received from a domestic corporation (sec. 243). In cases where at least 80 percent of the stock of the possession corporation is owned by a single domestic corporation, the possession corporation's possession source income generally may be distributed without the parent corporation incurring any regular U.S. income tax.

Taxes paid or accrued by possession corporations to foreign countries or possessions on income which is taken into account in determining the section 936 credit are neither deductible nor allowable for purposes of determining the foreign tax credit.

A possession corporation's income, the tax on which may be offset by the section 936 credit, is not included in the alternative minimum taxable income (AMTI) of the possession corporation. Thus, possession corporations generally are exempt not only from the regular income tax but also from the alternative minimum tax (AMT). Moreover, dividends received by a U.S. corporation from a possession corporation generally do not constitute AMTI of the recipient corporation since, as described above, they may be offset by the dividends received deduction.

For purposes of determining a U.S. corporation's adjustment to AMTI based on adjusted current earnings (ACE), a deduction is allowed for certain dividends received. Specifically, a deduction is available (to the extent allowed under section 243 or

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245) for any dividend that qualifies for the 100-percent dividends received deduction for regular tax purposes, or that is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent that the dividend is attributable to income of the paying corporation which is subject to U.S. income tax determined after the application of section 936. A dividend received by a U.S. corporation from its wholly owned possession corporation subsidiary generally does not qualify for the dividends received deduction, and thus increases the ACE of the recipient, because the income of the ****907*676** possession corporation typically is not taxed by the United States due to the section 936 credit.

For purposes of computing the foreign tax credit, the Code provides that dividends paid by a possession corporation to an affiliated U.S. corporation are characterized as foreign source income. Unless an exception applies, dividends are subject to the separate foreign tax credit limitation for passive income.[51] In computing the AMT foreign tax credit, 75 percent of any withholding or income tax paid to a possession with respect to dividends received from a possession corporation generally is treated as a creditable tax.[52] Moreover for such computation, taxes paid to a possession by a possession corporation are deemed to be such a withholding tax for this purpose to the extent they would be treated as taxes paid by the recipient of the dividend under rules similar to the rules of the indirect foreign tax credit (secs. 78 and 902) if the possession corporation were a foreign corporation.

REASONS FOR CHANGE

The committee recognizes the importance of the possession tax credit to the possessions generally, and to Puerto Rico in particular. Although the section 936 tax credit was enacted to foster economic development in the U.S. possessions, past studies have indicated that a disproportionate share of the tax benefits attributable to section 936 is realized by certain industries that create relatively few jobs in the possessions.[53] These industries tend to be those for which a large portion of taxable income is derived from the use of intangible assets (e.g., exploitation of patents, tradenames, or secret formulas). The committee is concerned, moreover, that a disproportionate share of the cost that all U.S. taxpayers bear in order to provide the section 936 credit may have inured to the benefit of the stockholders of the possession corporations, as compared to the U.S. citizens residing in the possessions. To address this concern without hurting the people for whose benefit the credit was adopted, the committee believes that a better approach would be to place a limit on the tax benefit available to a possession corporation attributable to its active business operations in the possessions, and to base that limit on a measure of the employment created by the corporation in the possession. The committee anticipates that by setting the limit at 60 percent of wages paid, the section 936 credits of possession corporations will continue to be substantial, and in many cases, will not be significantly reduced relative to present law.

****908*677** The committee also understands the importance to certain Caribbean countries and to the financial structure of Puerto Rico of the QPSII funds that currently are held there on deposit by possession corporations. As of year-end 1986, the Treasury Department reported that possession corporations held approximately $15 billion in Puerto Rican financial assets.[54] The committee believes that reliance on a wage-based cap on the portion of section 936 credit attributable to QPSII might not provide sufficient incentive to prevent taxpayers with possession corporation subsidiaries from liquidating their financial investments in Puerto Rico. The committee also believes that in order to further develop the economies of the possessions, it is important to encourage U.S. companies operating there to invest in tangible operating assets. Thus, the provision allows possession corporations to retain the effective U.S. tax exemption on QPSII to the extent that a possession corporation's financial investments do not exceed a specified percentage of its investment in tangible property used in the active conduct of its possession business.

The committee realizes that section 936 will continue to offer tax incentives for investment and employment in the possessions that are unavailable with respect to any other domestic or foreign location. Although the committee is concerned about the status of the economies of the possessions, it is also concerned that the tax benefits available under the section 936 credit might entice U.S.-based businesses to relocate their operations from the mainland to the possessions, thereby closing mainland facilities and eliminating the jobs previously held there by mainland residents. The committee does not believe that a purpose of the section 936 credit should be to create employment opportunities for residents of the possessions at the expense of mainland workers.

EXPLANATION OF PROVISION

In general, the bill provides that the section 936 credit is determined as under present law, but is subject to two limitations. Under the first limitation, the credit allowed to a possession corporation for a taxable year against U.S. tax on its business income (i.e., income derived from the active conduct of a possession-based business, or from the sale of assets used in such a business) is limited to 60 percent of the qualified possession wages the possession corporation pays to its employees. For purposes of this limitation, qualified possession wages generally are wages paid or incurred by the possession corporation during the taxable year to any employee for services performed in a U.S. possession, but only if the services are performed while the principal place of employment of the employee is within the possession. For example, wages paid for services performed in Puerto Rico by a full-time employee of the possession corporation who resides in Puerto Rico generally would be qualified possession wages. On the other hand, wages paid by the same company to a U.S.-based employee who provides only temporary services in Puerto Rico would not meet the standard for inclusion ****909*678** in the wage base for determining the possession corporation's active business credit limitation.

In computing the wage-based credit limitation, only certain wages paid to employees in the possessions are taken into account. For this purpose, wages are defined by reference to the Federal Unemployment Tax Act (FUTA) definition of wages, and the amount of wages taken into account for each employee is limited to the maximum earnings subject to tax under the OASDI portion of Social Security (currently $57,600). The bill requires the Treasury Secretary to provide rules for making appropriate adjustments to this limit in the cases of part-time employees and of employees whose principal place of employment is not within a possession for the entire year. In such cases, the committee expects that the Secretary will provide that the limit be pro-rated in such a way as to take account of the fact that the employee did not perform services for the possession corporation on a full-time basis (or did not perform services for the corporation for an entire taxable year).

In addition, the bill provides that qualified possession wages do not include amounts paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer (and any related possession corporations) is to make employees available for temporary periods to other persons in return for compensation.

The second limitation placed on the section 936 credit under the bill deals with QPSII. Under this provision, the credit allowed against U.S. tax on QPSII is limited in cases where the possession corporation's assets that generate QPSII exceed 80 percent of its qualified tangible business investment in the possessions. In such a case, no section 936 credit is allowed against U.S. tax on the portion (determined on a pro-rata basis) of its QPSII attributable to QPSII assets which exceed that 80-percent threshold.

For purposes of the QPSII limitation, the amount of a possession corporation's QPSII assets for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and profits) of its assets which generate QPSII as of the close of each quarter of that year. Similarly, a possession corporation's qualified tangible business investment for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and profits) of tangible property used in a possession by the corporation in the conduct of an active trade or business.

The bill requires possession corporations to certify that the establishment of new operations in a possession after May 13, 1993 (or the addition, after that date, to an existing possession-based business) will not result in a decrease in employment at an existing business operation of the corporation or a related person in the United States. If the corporation fails to provide the certification with respect to such an establishment or addition, or if there is reason to believe that the establishment or addition was done with the intention of closing down a related U.S.-based operation, then for purposes of computing the bill's limitations on the credit, the wages paid and the tangible business property used by the possession corporation with respect to the new operation will be disregarded.

****910*679** The bill allows an affiliated group of corporations (generally as defined in sec. 1504, but treating possession corporations as includible corporations) to elect to consolidate related possession corporations for purposes of determining the application of the bill's two limitations on the section 936 credit. For a group so electing, the available consolidated credit amount is to be allocated among the possession corporations under rules prescribed by the Treasury Secretary.

If the section 936 credit of a possession corporation is reduced by either of the limitations for a taxable year, the bill permits the corporation to claim a deduction for a portion of its income taxes paid or accrued to a possession for that year. The portion of the taxes so deductible would be the portion that is allocable on a pro-rata basis to the corporation's taxable

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income (computed before taking into account any possession tax), the U.S. tax on which is not offset by the section 936 credit as a result of the bill's limitations.

For example, assume that for a taxable year a possession corporation has taxable income of $2,857 (computed without allowing a deduction for possession taxes), yielding a pre-936-credit U.S. income tax liability of $1,000, all of which could be offset by the section 936 credit (computed before application of the limitations contained in the bill). Further assume that the corporation paid $100 of tax to a possession for that year, and that due to the bill's limitations on the section 936 credit, only $800 of section 936 credit is available. In this case, $20 of possession tax may be deducted by the possession corporation, thus reducing its taxable income to $2,837. Thus, its pre-936 credit U.S. income tax liability is $993, and its net U.S. tax liability is $193.

The bill also creates a new separate foreign tax credit limitation category for purposes of computing the AMT foreign tax credit. The new category would include the portion of dividends received from a possession corporation for which the dividends received deduction is disallowed, and thus is included in alternative minimum taxable income.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

For taxable years beginning in 1994 and taxable years beginning in 1995, possession corporations may elect to claim an alternative credit not subject to the bill's two limitations described above. The section 936 credit would be 80 percent of the current law credit if this alternative is elected for taxable years beginning in 1994, and 60 percent of the current law credit if elected for taxable years beginning in 1995. Taxes imposed by the possessions on income the U.S. tax on which is not offset by the section 936 credit as a result of the percentage limitations are deductible by the possession corporation.

****911*680** 7. Enhance earnings stripping rules (sec. 14227 of the bill and sec. 163(j) of the Code)

PRESENT LAW

Interest deductions in general

Interest expenses of a U.S. corporate taxpayer are generally deductible, whether or not the interest is paid to a related party and whether or not the interest income is subject to U.S. taxation in the hands of the recipient. For example, interest income may be exempt from U.S. tax if the recipient generally is exempt under Code section 401 or section 501. As another example, the income may be exempt from U.S. tax if the recipient is a foreign person and either the Code imposes no tax or a treaty eliminates the U.S. tax that otherwise would apply under the Code.

Interest paid to certain related persons

In certain cases where interest is paid by a corporation to a related person, and no U.S. tax is imposed on the recipient's interest income, the so-called "earnings stripping rules" in the Code provide for denial of interest deductions by the debtor to the extent that the corporation's net interest expense exceeds 50 percent of its adjusted taxable income (sec. 163(j)). The disallowance cannot exceed the amount of tax-exempt interest paid to related persons; such interest is known as "disqualified interest." The disallowance does not apply to interest on debt with a fixed term that was issued on or before July 10, 1989, or that was issued after that date pursuant to certain written binding contracts in effect on that date.

For this purpose, a taxpayer's adjusted taxable income generally is its taxable income computed without regard to net interest expense, net operating loss carryovers, or any deduction allowable for depreciation, amortization, or depletion, and computed with such other adjustments as are provided by regulations. An interest recipient is considered to be related to the debtor if the recipient and debtor would be treated as related under the rules of section 267(b) or would be subject to the controlled partnership rules of section 707(b)(1).

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A corporation's interest deductions for a taxable year are not limited under the earnings stripping provision unless the ratio of debt to equity of the corporation as of the close of the taxable year (or on such other days during the taxable year as regulations may prescribe) exceeds 1.5 to 1. The ratio of debt to equity means the ratio that the total indebtedness of the corporation bears to the sum of its money and all other assets, reduced (but not below zero) by such total indebtedness, taking into account such adjustments as the Secretary may prescribe in regulations. For this purpose, the amount taken into account with respect to any asset is that asset's adjusted basis for purposes of determining gain.

Any amount of interest disallowed under the earnings stripping provision is permitted to be carried forward as disqualified interest to a subsequent taxable year. In addition, a taxpayer is permitted to carry forward any excess limitation from its three most recent taxable years. The term excess limitation means the excess (if any) of 50 percent of the debtor's adjusted taxable income over its net ****912*681** interest expense. The excess limitation carried forward reduces the disallowance that would otherwise occur in the year to which the excess is carried.

If a treaty between the United States and any foreign country reduces, but does not eliminate, the 30-percent U.S. tax prescribed by the Code with respect to interest that the taxpayer pays to a related person, the interest is subject to disallowance in the same proportion that the treaty's rate reduction (from the 30-percent statutory rate) bears to 30 percent.

The question of whether a payment to a pass-through entity (such as a partnership, regulated investment company, or real estate investment trust) is treated as a payment to a person related to the debtor generally is determined at the entity level. However, if interest paid to a pass-through entity is treated as paid to a related person, the question of whether the recipient is tax-exempt is determined at the partner (or other beneficial owner) level.

In the case of corporations that form part of a U.S. affiliated group (whether or not such corporations file a consolidated return), the earnings stripping limitation generally applies on a group basis.

Interest paid to an unrelated person on debt guaranteed by a related person

The Treasury is authorized to provide such regulations as may be appropriate to prevent the avoidance of the purposes of the earnings stripping rules, including regulations that disallow deductions for interest paid to unrelated creditors in certain cases: for example, certain cases involving guarantees of the debt by parties related to the debtor, and cases involving so-called "back-to-back loans." The legislative history accompanying the bill enacting the provision, however, indicates an intent that regulations generally not subject third-party interest to disallowance whenever a guarantee is given in the ordinary course.[55] The legislative history further indicates an expectation that any regulations applying the earnings stripping rules to third-party debt guaranteed by a person related to the debtor would not apply to debt outstanding prior to notice of the rule (to the extent that the regulations depart from positions the Service and Treasury might properly take under analogous ****913*682** principles of law that would recharacterize guaranteed debt as equity).

To date, Treasury has promulgated no proposed or final regulations that interpret the application of the earnings stripping rules to third-party debt that is guaranteed by a person related to the debtor.

REASONS FOR CHANGE

Guarantees and the erosion of the U.S. tax base

Where a group of related corporations earns income that is at least in part subject to U.S. tax, the committee believes that it is important to preserve for U.S. taxing jurisdiction an appropriate share of the net income of the group. The committee is aware of provisions in the Code that are designed specifically with this purpose in mind. The committee considers the earnings stripping provision to be so designed.

The operative effect of the earnings stripping provision is to deny deductions for interest expenses deemed to be excessive under the criteria of the provision. Where the deductions are for interest paid to tax-exempt related parties, net income is

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shifted from the payor to the related party. The committee, like the Congress in 1989, is aware that the earnings stripping provision can be fully effective only to the extent that taxpayers are unable to circumvent its effect through the device of borrowing on the credit of persons whose assets are outside of U.S. taxing jurisdiction. The same "excess" interest deductions, and the same resultant "shifting" of net income out of U.S. taxing jurisdiction, is obtainable through borrowing by U.S. corporations on such credit.

A U.S. corporation can borrow on such credit by borrowing from an unrelated party and having the debt guaranteed by a related party that is exempt from U.S. tax. Although the interest on guaranteed debt is paid to an unrelated lender, the debt serves as a substitute for a direct related party loan to the extent that money is fungible. An affiliated group requires funding for all of its activities and assets, and has flexibility as to the source and use of its funds. Even money borrowed for a specific purpose frees up funds for other purposes.

Had the U.S. corporation borrowed from the related tax-exempt person, and the related tax-exempt person been funded in part by loans from unrelated persons and in part by equity, the earnings stripping provision by its terms might have applied. However, absent the future issuance of regulations, that provision generally does not now apply to interest paid on a guaranteed loan from the unrelated person to the U.S. corporation. Yet the two alternative funding methods are similar.

For example, assume that a foreign corporation with no U.S. operations owns all the stock of a U.S. corporation that conducts a U.S. business. Assume that, aside from its stock in the U.S. subsidiary, the foreign parent has foreign operating assets that substantially exceed the operating assets of the U.S. corporation. Assume that creditors are willing to lend to the group, and due to various types of guarantees that will be provided by the parent, the parties are indifferent (aside from tax considerations) as to the ****914*683** identity of the corporation that is legally considered to be the primary obligor on any single obligation.

If the primary obligor on all the loans is the parent corporation, and the parent lends to the U.S. subsidiary, then the earnings stripping rules will be implicated if the related party interest is exempt from gross basis tax and the amount of debt and interest incurred by the subsidiary is excessive under those rules. However, because all parties are indifferent as to which corporation is the primary obligor on any loan, the transactions can be structured so that the same excessive level of debt and interest is owed directly by the U.S. subsidiary to the unrelated creditors, and the earnings stripping rules will not be implicated.

The committee is concerned about the extent to which the amount of U.S. tax paid with respect to the U.S. operations of the group depends on whether, on the one hand, the creditors all lend to the parent which in turn lends to the subsidiary, or on the other hand, the creditors lend to the subsidiary. In either case, the loans from the unrelated creditors may be viewed as supporting the income-producing activities of the group as a whole. However, in each case the financing could be structured so that an excessive amount of interest deductions may be claimed against the only income of the group that is subject to U.S. tax–namely, the amount earned by the U.S. subsidiary–unless in each case a provision, such the earnings stripping provision, applies so as to prevent an inappropriate U.S. deduction of expenses of earning income outside U.S. taxing jurisdiction.[56]

How should the law treat guarantees?

When a U.S. corporation borrows on the credit of a tax-exempt person, it is the committee's view that, beyond some threshold, the interest on such a loan is properly considered to be an expense of holding the assets and generating the income of the tax-exempt person. The committee notes that other provisions of present law limit the deductions that may be taken for expenses, including interest, in analogous circumstances. These provisions adopt approaches to the limitation of deductions that differ from the one applied under the earnings stripping rules.[57]

****915*684** For reasons of administrability, certainty, and consistency with existing tax treaties, Congress enacted section 163(j), and thereby chose to address the erosion of the U.S. tax base through interest deductions, in the case of a U.S. corporation owned by persons exempt from U.S. tax, by limiting related party interest deductions based on an approximation of the cash flow of the corporation and on the debt-to-equity ratio of the corporation. Because the committee is not willing to abandon that approach in favor of either a less objective model or a fundamental departure from accepted practice, the committee believes that this approach generally should be preserved. The committee also now believes, however, that whatever objective standards apply to related party loans should also apply to unrelated party loans guaranteed by related

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persons that are exempt from U.S. tax. To the extent that lenders and borrowers are indifferent (aside from tax considerations) between the two financing methods, the committee believes that the tax law should treat the two methods with similar indifference. The committee sees little purpose in applying two different tax treatments to the two cases, if taxpayers can elect between them with little economic consequence other than tax savings.

Treatment of guaranteed loans from U.S. lenders

As discussed above, the committee believes that the purpose of the earnings stripping rules is to preserve for U.S. taxing jurisdiction an appropriate share of the net income of a group of related companies. Whether the unrelated party to whom the group member pays interest is or is not a net basis U.S. taxpayer is not relevant to the measurement of the group's U.S.-taxable income, in the committee's view.[58] Such treatment is consistent with the application of section 163(j) under present law to a related party loan in cases where the tax-exempt lender borrows from a U.S. taxpayer, which is an appropriate result, in the committee's view.[59]

The committee also notes other factors that may be taken into account in considering the justification for applying the provision to guaranteed loans from U.S. lenders. The committee is concerned that taxpayers not avoid the purposes of the provision through the use of conduit arrangements, including transactions in which the "conduit" is a U.S. taxpayer. Certain types of guarantees can be used to achieve results similar to those achieved with back-to-back loans. As a practical matter, it can be difficult for the IRS to identify ****916*685** and combat conduit arrangements on a case-by-case basis. Applying section 163(j) to all guaranteed debt avoids this difficulty.

In addition, it may be noted that a typical U.S.-taxpaying financial intermediary that might engage in (guaranteed) lending differs from other types of taxpayers in the extent to which it is itself leveraged with debt. Because of this leverage, the "spread" that generally represents a bank's net taxable income from a loan is small relative to the interest deduction that can be claimed by the debtor. The bank's depositors, in turn, may include domestic or foreign tax-exempt entities. The combined U.S. net basis tax paid by the financial intermediary and its depositors on a fixed amount of interest income may thus be substantially less than the tax saved by the taxable borrower by reason of an equal amount of interest deductions. Were that combined U.S. net basis tax to be relevant to the operation of the bill, it would be very difficult to ascertain the appropriate disallowance of interest deductions.

Taking into account the high degree to which financial intermediaries are leveraged with debt under the guarantee rules is consistent with the treatment of financial intermediaries under present law earnings stripping rules. Such leverage is taken into account under present law in that disallowance is based on the excessiveness of net interest expenses of a taxpayer–which generally has the effect of insulating financial intermediaries themselves from exposure to interest disallowance.

EXPLANATION OF PROVISION

In general

Interest may be treated as disqualified interest under the earnings stripping rules without regard to whether it is interest on a fixed-term obligation issued before, on, or after July 10, 1989. In addition, interest paid on a loan from an unrelated party generally is treated as disqualified interest if no gross-basis U.S. income tax is imposed on the interest, a related person guaranteed the loan, and the related person is either exempt from U.S. Federal income tax or is a foreign person. Thus, deductions may be disallowed for interest described above to the extent that the other conditions for disallowance under the earnings stripping rules apply.

Interest on guaranteed debt

Taxes imposed on the interest

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In order for the interest paid or accrued to an unrelated person to be disqualified due to a guarantee, there must be no gross basis U.S. income tax imposed on the interest. A "gross basis tax" is a U.S. income tax that is imposed without regard to deductions. For example, the 30 percent statutory tax on interest paid to a foreign person under Code section 871(a) or 881(a) is a "gross basis tax" for this purpose. If a treaty reduces the statutory gross basis tax without eliminating it, a ratable portion of this interest would be treated as having had no gross basis tax imposed on it. For example, if the treaty-reduced rate were 15 percent, then, as under present law in the case of a payment to a related person, half of the interest would be treated as subject to the full 30 percent gross ****917*686** basis tax, and the other half would be treated as subject to no gross basis tax.

Interest may be disqualified, however, whether or not it is subject to net basis U.S. income tax. (A "net basis tax" is simply a U.S. income tax that is not a gross basis tax.) For example, interest paid to a U.S. bank and reported as gross income may be treated as disqualified interest if the loan is guaranteed.

Taxes imposed on the guarantor

In order for the interest paid or accrued to an unrelated person to be disqualified due to a guarantee, the guarantor must be an organization exempt from income taxation or a foreign person, and the guarantor must not be described in either of two exceptions: one that applies where the debtor owns a controlling interest in the guarantor, and another that applies to cases, identified by regulation, where the interest on the indebtedness would have been subject to net basis tax if the interest had been paid to the guarantor.

For purposes of the controlled guarantor exception, a controlling interest in a corporation means direct or indirect ownership of at least 80 percent of the total voting power, and 80 percent of the value, of all classes of the corporation's stock. A controlling interest in any other entity means direct or indirect ownership of at least 80 percent of the profit and capital interests in the entity.

With respect to the other exception regarding cases where net basis tax hypothetically would have been imposed, the committee anticipates that the Secretary would exercise its authority to treat a foreign guarantor like a taxable U.S. person where the foreign person conducts a trade or business within the United States, and the Treasury is satisfied that income on a hypothetical loan by the foreign person to the debtor, similar to the third-party guaranteed loan, would have been effectively connected with the conduct of that U.S. trade or business, and taxed in the United States for that reason, after the application of any relevant treaty. The committee is concerned, however, that the hypothetical nature of such a test, if not designed properly, might tempt taxpayers to take aggressive reporting positions. Therefore, the committee intends that the Secretary have broad discretion to limit the scope of the exception to cases where the Secretary is fully satisfied that taxpayers are prevented from engaging in tax avoidance schemes, such as establishing an insubstantial U.S. trade or business for the purpose of qualifying for the exception.

Definition of guarantee

Except as provided in regulations, a guarantee is defined to include any arrangement under which a person directly or indirectly assures, on a conditional or unconditional basis, the payment of another's obligation. The committee intends that the term be interpreted broadly enough to encompass any form of credit support. This includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability. It includes an arrangement reflected in a "comfort letter," regardless whether the arrangement gives rise to a legally enforceable obligation. If a guarantee is contingent upon the occurrence of an event, the provision would apply as if the event had occurred.

****918*687** Relationship to treaties

The committee understands that the impact of this provision may fall heavily on foreign-based multinational enterprises. However, the provision generally applies to guarantees provided by all tax-exempt U.S. persons and tax-exempt foreign persons. The committee does not believe that the impact of the provision on foreign-owned entities conflicts with U.S. tax treaties.

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The provision does not, for example, distinguish between payments to U.S. residents on the one hand and payments to residents of other countries, on the other. In either case, deductions can be denied or not depending on the presence or absence of a disqualifying guarantee. Furthermore, the earnings stripping rules deny deductions only in cases believed to satisfy an objective standard of "thin capitalization." As set out more fully in the conference report accompanying the 1989 Act, disallowance in such cases may be consistent with treaties regardless of whether the disallowance applies only to thinly capitalized foreign-owned companies.[60] Moreover, the committee believes that the provision does not inappropriately subject similarly situated persons to dissimilar treatment. Some U.S. tax provisions under current law affect only foreign-owned U.S. businesses, but these provisions are designed solely to provide comparable treatment for these and other U.S. taxpayers in areas where the fact of foreign ownership interferes with the effective operation of domestic tax rules. In short, the committee believes that different but comparable tax treatment that reflects the different circumstances of foreign-owned and domestic-owned businesses does not necessarily constitute discrimination against foreign-owned U.S. businesses.

EFFECTIVE DATE

The provision applies to any interest paid or accrued in taxable years beginning after December 31, 1993.

C. FOREIGN TAX PROVISIONS

1. Require current taxation of certain earnings of controlled foreign corporations (secs. 14231–14233 of the bill, and secs. 951(a), 954(c), 956, 959, 960(b), 1296, 1297, and new sec. 956A of the Code)

PRESENT LAW

In general

U.S. persons generally are taxed currently by the United States on their worldwide income. U.S. tax on foreign source income may be reduced by credits for foreign income taxes paid by the U.S. person. Foreign income earned by a foreign corporation, the stock of which is owned in whole or in part by U.S. persons, generally is not taxed by the United States until the foreign corporation repatriates those earnings by payment of a dividend to its U.S. stockholders. If a foreign corporation pays a dividend to a domestic corporation that owns 10 percent or more of the voting stock of the ****919*688** foreign corporation, the domestic corporation may receive credits for foreign income taxes paid by the foreign corporation. This is sometimes known as the "indirect" foreign tax credit.

The Code sets forth several regimes providing exceptions to the general rule that defers U.S. tax on foreign income earned through foreign corporations. One such regime applies only to certain substantial U.S. shareholders in U.S.-controlled foreign corporations. Other regimes apply to other U.S. persons owning stock in predominantly "passive" foreign corporations. Still other regimes are primarily applicable to U.S. persons owning stock in domestic corporations, but also can be applied to U.S. persons owning stock in foreign corporations.

Controlled foreign corporations

General provisions

Under the controlled foreign corporation rules of subpart F (secs. 951–964), a controlled foreign corporation is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock, taking into account only so-called "U.S. shareholders": namely, those U.S. persons that own (directly, indirectly or by attribution) at least 10 percent of its voting stock (sec. 957).

A "U.S. shareholder," so defined, may be taxed currently by the United States on its proportionate share of the controlled

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foreign corporation's "subpart F income." The U.S. shareholder may claim an indirect foreign tax credit for its proportionate share of the foreign income taxes paid by the controlled foreign corporation on the subpart F income (sec. 960). Subpart F income typically is foreign income that is relatively movable from one taxing jurisdiction to another and that is subject to low rates of foreign tax relative to the U.S. rate. Subpart F income consists of foreign base company income, insurance income, and certain income relating to international boycotts and other violations of public policy. Excluded from the definition of subpart F income, among other things, are certain dividends and interest received from a related corporation organized and operated in the same foreign country as the recipient.

Investment of earnings in U.S. property

In addition to taxation of subpart F income and taxation of actual repatriations of earnings not already taxed as subpart F income, a U.S. shareholder may also be subject to U.S. taxation on the controlled foreign corporation's current or accumulated earnings (other than earnings that were previously taxed to the U.S. shareholders as subpart F income), at the time of any increase for the year in the amount of those earnings invested by the controlled foreign corporation in certain U.S. property (as defined in section 956). Thus, for example, assume that a controlled foreign corporation has an active foreign manufacturing business. It earns no subpart F income and has no U.S. property. It has $100 of accumulated earnings, all of which are invested in the foreign business. Assume that in the current year the foreign corporation disposes of $50 worth of foreign business assets and places the proceeds in ****920*689** a U.S. real estate investment or lends them to its U.S. shareholders. In either case, the U.S. shareholders are required to include $50 in gross income for the current year.

Receipt of previously taxed earnings and profits

Earnings and profits of a controlled foreign corporation that have been included in the income of U.S. shareholders before actual repatriation are not included again in the shareholders' gross income when such earnings are in fact distributed to the U.S. shareholders (sec. 959(a)). Earnings actually distributed are treated as comprising first amounts that were previously taxed as investments in U.S. property under section 956 (sec. 959(c)(1)), next amounts that were previously taxed as subpart F income under section 951(a)(1)(A) (sec. 959(c)(2)), and last amounts of other earnings (sec. 959(c)(3)).

A U.S. shareholder is permitted to increase its foreign tax credit limitation in the year of the distribution of previously taxed earnings and profits (sec. 960(b)). The increase equals the excess of the amount by which its foreign tax credit limitation for the year of the income inclusion was increased as a result of that inclusion, over the amount of foreign taxes which were allowable as a credit in that year and which would not have been so allowable but for the income inclusion. The increase in the foreign tax credit limitation may not, however, exceed the amount of the foreign taxes actually paid with respect to the distribution of previously taxed earnings and profits. All such determinations are made separately for each controlled foreign corporation, for each taxable year, and for each foreign tax credit limitation category.

Passive foreign investment companies

Definitions

If any foreign corporation (including a controlled foreign corporation) is a so-called "passive foreign investment company" (PFIC), U.S. persons (including 10-percent "U.S. shareholders") that own stock in the PFIC may be subject to one of two other sets of operating rules that eliminate or reduce the benefits of deferral (secs. 1291–1297). A PFIC generally is defined as any foreign corporation if (1) 75 percent or more of its gross income for the taxable year consists of passive income, or (2) 50 percent or more of its assets consist of passive assets, defined as assets that produce, or are held for the production of, passive income (sec. 1296(a)). Assets generally are measured by their fair market value; however, a foreign corporation may elect (on a permanent basis) to have its assets measured by their adjusted bases.

Passive income does not include any income derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States, or, to the extent provided in regulations, by any other corporation (sec. 1296(b)(2)(A)). According to IRS Notice 89–81, 1989–2 C.B. 399, forthcoming Treasury regulations will provide that income effectively connected with the active conduct of a U.S. trade or business pursuant to a license to do business as a

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bank in the United States, as well as income derived in bona fide banking activities (as defined in Notice 89–81) conducted ****921*690** abroad by a U.S. licensed bank, will be treated as income other than passive income. In addition, a foreign corporation that is not licensed to do business as a bank in the United States, but that qualifies as an active foreign bank (or "qualified affiliate") under conditions set forth in Notice 89–81, will be permitted to treat its income derived in the performance of bona fide banking activities as not passive income.

Look-through rules

In determining whether foreign corporations that own subsidiaries are PFICs, look-through treatment is provided in certain cases (sec. 1296(c)). Under this look-through rule, a foreign corporation that owns, directly or indirectly, at least 25 percent of the value of the stock of another corporation is treated as owning a proportionate part of the other corporation's assets and income. Thus, amounts such as interest and dividends received from foreign or domestic subsidiaries are eliminated from the shareholder's income in applying the income test, and the stock or debt investment is eliminated from the shareholder's assets in applying the asset test.

In addition to the look-through rule applicable to 25-percent-owned subsidiaries, interest, dividends, rents, and royalties received from related persons that are not subject to section 1296(c) look-through treatment are excepted from treatment as passive income to the extent that, under regulations prescribed by the Secretary, those amounts are allocable to income of the payor that is not passive income (sec. 1296(b)(2)(C)).[61] As a corollary, the characterization of the assets that generate the income will follow the characterization of the income so that, for example, a loan to a related person will be treated as a passive asset only if the interest on the loan is treated as passive income.

Tax treatment of PFICs

Under the tax rules applicable at the election of a U.S. person owning PFIC stock, the U.S. person includes currently in gross income its share of the PFIC's total earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received. As under the controlled foreign corporation rules, the distribution of earnings and profits that were previously included in the income of an electing shareholder under these rules is not treated as a dividend to the shareholder (sec. 1293(c)). A nonelecting U.S. person owning PFIC stock pays no current tax on the PFIC's undistributed income. However, when realizing income earned through ownership of PFIC stock (such as certain amounts distributed by the PFIC or capital gains from selling PFIC stock), the nonelecting U.S. person may pay an additional interest charge. This interest charge is related to the value of delaying income realization, and therefore delaying tax, by investing indirectly in assets through a foreign corporation.

****922*691** Accumulated earnings tax

In addition to the corporate income tax, the Code also imposes a tax, at the rate of 28 percent, on the accumulated taxable income of any corporation (with certain exceptions) formed or availed of for the purpose of avoiding income tax with respect to its shareholders (or the shareholders of any other corporation), by permitting its earnings and profits to accumulate instead of being distributed (secs. 531, 532(a)). The specified tax-avoidance purpose generally is determined by the fact that the earnings and profits of the corporation are allowed to accumulate beyond the reasonable needs of the business (sec. 533). The accumulated earnings tax acts as an approximation of the tax that would have been incurred by the shareholders on dividends actually distributed by the corporation.

The accumulated earnings tax does not apply to certain specified types of corporations, including PFICs (sec. 532(b)). The accumulated earnings tax does apply, by its terms, to most other foreign corporations including controlled foreign corporations.

REASONS FOR CHANGE

Inclusions based on excess passive assets

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The committee is aware that the deferral of U.S. tax on income of U.S. persons earned through foreign corporations may tend to favor foreign investment over U.S. investment, and can provide an incentive to engage in certain tax-haven activities. The committee understands that prior enactments that permit deferral of U.S. tax on most types of active business income derived through controlled foreign corporations have been justified as enhancing the competitiveness of U.S.-owned business operations abroad. In fact, Congress referred to such concerns in rejecting the President's proposal to eliminate all deferral in the Revenue Act of 1962.[62] The committee believes, however, that deferral of U.S. tax on accumulated active business profits is not necessary to maintain the competitiveness of business activities conducted by controlled foreign corporations where such accumulated profits are held in the form of excessive accumulations of passive assets.

The controlled foreign corporation rules impose current U.S. tax on certain passive income earned by a controlled foreign corporation. The PFIC rules restrict the benefits of deferral in the case of foreign corporations that allow undistributed earnings and profits to accumulate in passive investments to such an extent that the amount of the corporation's passive assets equals or exceeds the amount of its active business assets. The committee believes that neither of these regimes sufficiently restricts the benefits of deferral in the case of controlled foreign corporations that accumulate excessive quantities of earnings and profits, without reinvesting them in active business assets, and without subjecting them to U.S. income taxation (with proper allowance for foreign tax credits) in the hands of the U.S. shareholders.

****923*692** The committee understands that, although the accumulated earnings tax nominally applies to controlled foreign corporations, it is not often applied to foreign corporations in practice. One reason for this nonapplication, the committee believes, is that the accumulated earnings tax of present law employs a subjective analysis to determine the reasonable business needs for accumulating earnings in the form of passive assets; in the case of a foreign corporation, this type of analysis is difficult to apply. Therefore, the committee believes it appropriate to impose on controlled foreign corporations a new type of limitation on accumulating deferred earnings that turns on objective rather than subjective criteria.

Modification of section 956

The committee has carefully considered how best to structure the bill's provisions as to income inclusions of earnings invested in excess passive assets. The committee believes that the provisions of present law applicable to income inclusions of earnings invested in U.S. property under section 956 could be improved, and that those provisions of present law are, in some ways, conceptually parallel to the bill's excess passive assets provisions. The committee believes that the bill's structure and operating rules for the excess passive assets provisions are also appropriate for inclusions of earnings invested in U.S. property, and, accordingly, modifies the latter provisions in the bill.

Measurement of assets under the PFIC rules

The committee understands that many foreign corporations that are subject to the PFIC rules hold assets (such as tangible or intangible business assets) the fair market value of which is difficult to determine. This difficulty is faced primarily by those PFICs that are also controlled foreign corporations, rather than those PFICs that are foreign-controlled investment funds (which tend to hold marketable assets). The committee is aware that the process of determining the fair market value of such foreign assets is a source of complexity and administrative burden for taxpayers, and is an enforcement problem for the Internal Revenue Service.

The committee believes that measurement by adjusted basis is well established in the case of controlled foreign corporations' investments of earnings in U.S. property, and is highly appropriate to the task of measuring the earnings of a controlled foreign corporation that are invested in excess passive assets. The committee is not persuaded that a different method should apply for purposes of measuring assets when testing a controlled foreign corporation for its status as a PFIC.

Foreign securities brokers and dealers

When the PFIC rules were enacted in 1986, Congress believed that foreign corporations conducting an active business as dealers in stocks, securities and derivative financial products generally would be excluded from qualification as PFICs under both the asset and income tests. Specifically, Congress expected that foreign securities dealers would not qualify as PFICs

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under the asset test, because more than 50 percent of their assets would consist of inventory securities and other assets that produce income treated as not ****924*693** passive under the dealer exception of section 954(c). Congress also expected that foreign securities dealers would not qualify as PFICs under the gross income test, inasmuch as a substantial portion of their gross income would be commission income (not passive) from underwriting issues of stocks and securities.[63]

The committee is informed, however, that foreign securities dealers do not always earn sufficient gross income in the form of underwriting commissions to avoid qualification as PFICs under the gross income test. For example, securities dealers may earn substantial amounts of interest and dividend income from securities held as inventory for sale to customers. Securities dealers may also earn substantial amounts of interest income from transactions incidental to the business of dealing in securities, such as margin loans and reverse repurchase transactions.

The committee is further informed that inventory securities held by a foreign corporate securities dealer may not represent more than 50 percent of the corporation's assets. As a result, a foreign securities dealer may qualify as a PFIC under the asset test. In most cases, moreover, the committee is informed that inventory securities represent less than 75 percent of the assets of a foreign securities dealer, so that most foreign securities dealers would be considered to hold excess passive assets under the bill.

In contrast, existing provisions of the Code and IRS Notice 89–81 ensure that income and assets attributable to bona fide banking activities conducted by a foreign bank or a qualified affiliate are not treated as passive income and assets, if certain conditions are satisfied. The committee is informed, however, that there is considerable overlap between the activities designated as bona fide banking activities under Notice 89–81 and the activities conducted by foreign securities dealers. For example, foreign securities dealers may regularly arrange and engage in foreign exchange transactions, enter into interest rate and currency swaps and other hedging transactions, and underwrite issues of stock, debt obligations and other securities. Each of these activities is designated in Notice 89–81 as a bona fide banking activity.

The committee believes that it is appropriate to provide an exception, similar to that provided under section 1296(b)(2)(A), for income earned by foreign securities brokers and dealers in an active securities business. The committee believes that the availability of this exception should be restricted to U.S. shareholders of controlled foreign corporations in order to ensure that the exception cannot be used by U.S. portfolio investors to avoid the PFIC rules.

Effect on foreign tax credit limitation of distributions of previously taxed earnings

The provisions that permit an indirect foreign tax credit to be claimed in the event of a distribution of previously taxed earnings are particularly difficult to administer. This difficulty arises because taxpayers must determine the amount of excess foreign tax credit limitation associated with a distribution of previously taxed earnings on a separate category by separate category basis, on a ****925*694** foreign corporation by foreign corporation basis, as well as on a year by year basis. Additional complexities arise because taxpayers are required as a result of distributions to trace earnings and profits up tiers of foreign corporations. The bill simplifies present law by requiring taxpayers to establish excess limitation accounts only on a separate category by separate category basis; the taxpayer will not be required to track earnings on a controlled foreign corporation by controlled foreign corporation or a year by year basis.

In addition, the Tax Reform Act of 1986 revised the indirect foreign tax credit by providing for a multi-year "pooling" mechanism. This mechanism was designed to ameliorate the problems associated with timing mismatches of earnings and profits and foreign tax payments by placing all post-1986 earnings and profits and foreign tax payments in respective pools, and by providing for averaging of these respective amounts for purposes of claiming the indirect credit. The committee believes that the rules of section 960(b) that apply for purposes of determining adjustments to the foreign tax credit limitation should also employ the multi-year pooling concept. In addition, the committee believes it is appropriate to substitute the multi-year pooling concept for the current annual accounting rules that apply to investments of earnings in U.S. property; therefore, the bill adopts a pooling approach in its operating rules for income inclusions based on excess passive assets and income inclusions based on investments in U.S. property.

EXPLANATION OF PROVISION

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In general

The bill limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations. As explained in detail below, the bill generally requires current inclusions in the income of U.S. shareholders of a controlled foreign corporation to the extent of the corporation's accumulated earnings invested in excess passive assets. The bill also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporation and PFICs.

Inclusions based on excess passive assets

Amount included

The bill adds new section 956A to the Code, which measures the amount of retained earnings of a controlled foreign corporation that is potentially subject to inclusion in the income of a U.S. shareholder of the foreign corporation as a result of the foreign corporation's investment in "excess passive assets." The amount determined under section 956A with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the controlled foreign corporation's "excess passive assets," over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of excess passive ****926*695** assets.[64] The second amount is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits),[65] reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under new section 956A, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A) (see new sec. 951(a)(1)(C)). (See the discussion of the bill's rules for the treatment of previously taxed income under "Coordination and ordering provisions," below.)

Excess passive assets

"Excess passive assets" are defined as the excess (if any) for the taxable year of the average amount of passive assets held by the controlled foreign corporation as of the close of each quarter of its taxable year, over 25 percent of the average amount of total assets held by the controlled foreign corporation as of the close of each quarter of its taxable year. For this purpose, an asset is measured by its adjusted basis as determined for purposes of computing earnings and profits.[66] The committee intends that the measurement of assets as of the close of each quarter of the taxable year shall disregard short-term loans or other temporary arrangements with regard to the corporations's assets, where one of the principal purposes of such an arrangement was to avoid taking passive assets into account for purposes of this provision.

Passive assets are defined generally as under the PFIC rules, i.e., assets held by the controlled foreign corporation that produce passive income (as defined in sec. 1296(b)) or that are held for the production of passive income. The PFIC look-through rules applicable to 25-percent-owned subsidiaries and certain payments received from related persons apply for this purpose. The bill modifies certain definitions of assets and income for purposes of the PFIC rules (see description below of certain modifications of the PFIC rules). These modifications are also applicable for purposes of determining excess passive assets under section 956A.

****927*696** Coordination and ordering provisions

Passive assets for purposes of the excess passive assets provisions do not include any assets that are treated as U.S. property for purposes of section 956.

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The bill provides that actual distributions during the taxable year and their effects on the determination of earnings and profits, previously taxed amounts, or any other item are taken into account prior to the determination of amounts under section 956 that are subject to income inclusion under section 951(a)(1)(B), and amounts under section 956A that are subject to income inclusion under section 951(a)(1)(C).[67]

The bill further provides that all amounts of assets, earnings included in income, previously taxed amounts, and any other item determined for purposes of the excess passive assets provisions are to be determined after the application of section 956 (and income inclusions thereunder) for the taxable year.

Income inclusions under section 956A are treated similarly to income inclusions under section 956 for purposes of the ordering rules applicable to the different categories of previously taxed income under section 959(c). Thus, when the controlled foreign corporation makes an actual distribution of its earnings to its shareholders, the earnings distributed are treated as first attributable to the retained earnings that were required in prior years to be included in income as investments in excess passive assets under section 956A (amounts of earnings described in sec. 959(c)(1)(B)), together with the retained earnings that were required in prior years to be included in income as investments in U.S. property under section 956 (amounts of earnings described in sec. 959(c)(1)(A)). The attribution between the two categories is made on a pro rata basis. As under present law, distributed earnings are treated as next attributable to the retained earnings that were required in prior years to be included in income as subpart F income under section 951(a)(1)(A) (amounts of earnings described in sec. 959(c)(2)), and last attributable to other earnings and profits.

In addition, amounts that would be included in income as investments in U.S. property under section 956 or as investments in excess passive assets under section 956A are treated as first attributable to the retained earnings that were required to be included in income as subpart F income under section 951(a)(1)(A) (amounts of earnings described in sec. 959(c)(2)), and then attributable to other earnings and profits. As under present law in the case of investments in U.S. property, to the extent that an amount would be included in income as either an investment in U.S. property or an investment in excess passive assets, but for being attributable to earnings that had been previously taxed as subpart F income under section 951(a)(1)(A), that amount of earnings is converted from an amount treated as previously taxed under section 951(a)(1)(A) (amounts of earnings described in sec. 959(c)(2)), to an amount treated as previously taxed under subparagraph (B) or (C) of section 951(a)(1) (amounts of earnings described in subparagraph (A) or (B) of sec. 959(c)(1)), as the case may be. Therefore, ****928*697** for example, the amount of earnings treated as having been previously included in the income of the shareholder on account of excess passive assets (i.e., the amount of earnings described in section 959(c)(1)(B)) includes not only earnings that actually resulted in an inclusion of income under section 951(a)(1)(C), but also earnings that would have resulted in such an inclusion but for being attributable to earnings that had been previously taxed as subpart F income under section 951(a)(1)(A).

Example

The above rules are illustrated by the following multi-year example:[68]

Year 1.–Assume that a U.S. corporation owns all the stock of a controlled foreign corporation, which is not (and has never been) a PFIC. The foreign corporation holds an average of 100 of assets, of which 35 are passive, and no U.S. property. Further assume that the foreign corporation has accumulated earnings and profits of 25 at the close of year 1, none of which is subpart F income or has otherwise previously been included in the income of a U.S. shareholder under subpart F. Under the bill, the foreign corporation is treated as having excess passive assets of 10. The amount determined under section 956A is also 10: that is, the lesser of the 10 of excess passive assets or the 25 of accumulated earnings. Therefore, for year 1, 10 is included in the U.S. corporation's income as earnings invested in excess passive assets under section 951(a)(1)(C). Also, 10 of the foreign corporation's earnings is treated as previously taxed and described in subsection (c)(1)(B) of section 959 (as income previously taxed under section 951(a)(1)(C)). The controlled foreign corporation's accumulated earnings of 25 are unchanged by the inclusion in income under section 951(a)(1)(C).

Year 2.–Next assume that in year 2, the controlled foreign corporation still has average total assets of 100, but now 40 (rather than 35) of these assets are passive. Also assume that the foreign corporation earns 5 of subpart F interest income in year 2, and makes no actual distributions of earnings and profits. (For simplicity, assume for this purpose that the new earnings have

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been taken into account in arriving at the figure of 100 for average assets.) As a result, the foreign corporation holds accumulated earnings and profits of 30 at the close of year 2. The interest income of 5 is included in the U.S. corporation's income as subpart F income under sec. 951(a)(1)(A).

Under the bill, before computing whether there is an additional income inclusion on account of excess passive assets, the 5 of subpart F earnings is treated as previously taxed and described in subsection (c)(2) of section 959 (as income previously taxed under section 951(a)(1)(A)). The year 2 amount determined under section 956A is 5. It is the lesser of two amounts. The first amount is 5, or the difference between the 15 of excess passive assets in year 2 and the 10 of previous inclusions of earnings invested in excess passive assets. The second amount is 20, or the difference between the 30 of accumulated earnings and the 10 of previous inclusions ****929*698** of excess passive assets. the amount included in thE U.s. corporation's year 2 income on account of its (increased) investment in excess passive assets, however, is zero. This results from the 5 of subpart F income under section 951(a)(1)(A) that the foreign corporation earned in year 2, and the ordering rules of section 959 as modified by the bill. Under the bill, there is no excess of the amount determined under section 956A (5, as noted above) over the amount of the foreign corporation's retained earnings that have been included in the U.S. corporation's income under section 951(a)(1)(A) (also 5). The bill also provides, in this case, that the earnings in the amount of 5 that would have been included in income under section 951(a)(1)(C) but for the previously taxed subpart F income are to be treated as described in section 959(c)(1)(B) (i.e., as earnings previously taxed as investments in excess passive assets) rather than in section 959(c)(2) (i.e., as earnings previously taxed as subpart F income under section 951(a)(1)(A)). Therefore, at the end of year 2, 15 is the total amount of earnings (10 from year 1 plus 5 from year 2) treated as described in section 959(c)(1), and the accumulated earnings of 30 are unaffected by the income inclusions.

Year 3.–Assume that, as in year 2, the foreign corporation has an average of 40 of passive assets and 100 of total assets. Assume further that the foreign corporation earns another 5 of subpart F interest income, earns 10 of other income, and makes an actual distribution of 20 to the U.S. corporation. (Again, for simplicity, assume that the new earnings and the distribution have been taken into account in arriving at the figure of 100 for total assets.) The foreign corporation thus holds accumulated earnings and profits of 45 at year end, before taking the current-year distribution into account.

As in year 2, the year 3 subpart F interest income of 5 is included in the U.S. corporation's income (under sec. 951(a)(1)(A)). Also as in year 2, under the bill, before computing whether there is an income inclusion for year 3 on account of excess passive assets, the subpart F earnings of 5 are treated as previously taxed and described in section 959(c)(2) (as income previously taxed under section 951(a)(1)(A)).

The bill provides that the actual distribution of 20 is accounted for next. The distribution of earnings is treated as attributable first to the cumulative earnings described in section 959(c)(1) (15, in this case all described in section 959(c)(1)(B)), and next to the cumulative earnings described in section 959(c)(2) (5, in this case all from year 3). Thus, the distribution of 20 is treated as fully attributable to previously taxed earnings, and, after the distribution, no portion of the foreign corporation's retained earnings is treated as previously taxed income described by subsection (c)(1) or (c)(2) of section 959.

Next, if the foreign corporation had invested any of its earnings in U.S. property under section 956, the amount of the income inclusion under section 951(a)(1)(B) would be determined. In this case, there is none.

Last, the income inclusion (if any) under section 956A is determined. The amount determined under section 956A is 15. This is the lesser of 15 (the amount of excess passive assets, unreduced because ****930*699** no portion of the foreign corporation's retained earnings is treated as previously taxed under section 951(a)(1)(C)), and 25 (the amount of accumulated earnings, unreduced because no portion of the foreign corporation's retained earnings is treated as previously taxed under subparagraph (B) or (C) of section 951(a)(1)). The amount included in the U.S. corporation's income for year 3 under section 951(a)(1)(C) is the 15 determined under section 956A, again unreduced because no portion of the foreign corporation's retained earnings is treated as previously taxed under section 951(a)(1)(A). The U.S. corporation has a total income inclusion under subpart F of 20 for year 3: 5 under section 951(a)(1)(A) plus 15 under section 951(a)(1)(C). As of the end of year 3, the taxpayer treats 15 of earnings as described in section 959(c)(1)(B) (i.e., as earnings previously taxed as investments in excess passive assets), and has accumulated earnings of 25.

Special rules for decontrolled foreign corporations

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Proper adjustments are to be made to the measurement of assets and earnings in the case of any foreign corporation that ceases to be U.S.-controlled during the taxable year. The determination of the pro rata share held in such a corporation by any U.S. shareholder is to be made on the basis of stock ownership on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation. The determination of excess passive assets for such a taxable year is made by taking into account only those quarters of the taxable year that end prior to such day, and averaging only over such reduced number of quarters. The determination of current earnings and profits for such a taxable year is made by taking into account only a pro rata portion of the corporation's current earnings and profits for that entire year, based on the part of that year during which the foreign corporation is a controlled foreign corporation.

Anti-abuse rule

The bill provides regulatory authority under which the Treasury is instructed to prescribe such regulations as may be necessary to carry out the purposes of the excess passive assets provisions, and to prevent their avoidance. Within this authority, the committee intends that the Treasury prescribe regulations under which the earnings and assets of two or more controlled foreign corporations that are related may be aggregated and treated as the earnings and assets of a single corporation, if one of the principal purposes for separately organizing, acquiring, or maintaining such multiple corporations is to avoid an inclusion under the excess passive assets provision.

For example, assume that two controlled foreign corporations are controlled by the same U.S. shareholders. If one of the principal purposes for maintaining the assets and earnings described above in the two separate corporations is to avoid an income inclusion under the excess passive assets rules, then the committee anticipates that regulations would provide for treating their assets and earnings as belonging to a single corporation. In making the determination as to purpose, the committee expects that the regulations may take into account various presumptions, including (but not ****931*700** limited to) those set forth in temporary Treas. reg. sec. 1.954–1T(b)(4).

Modification of section 956

The bill treats earnings invested by a controlled foreign corporation in U.S. property under revised rules that parallel those that govern the treatment of excess passive assets, as described above. Under the revised rules, the amount determined under section 956 with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the U.S. property of the controlled foreign corporation, over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of earnings invested in U.S. property.[69] The second amount is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits), reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under section 956, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A) (see sec. 951(a)(1)(B), as modified by the bill). (See the discussion of the bill's rules for the treatment of previously taxed income under "Coordination and ordering provisions," above.)

As noted above, the bill provides that actual distributions during the taxable year and their effects on the determination of earnings and profits, previously taxed amounts, or any other item, are taken into account prior to the determination of amounts under section 956 that are subject to income inclusion under section 951(a)(1)(B), and amounts under section 956A that are subject to income inclusion under section 951(a)(1)(C).

The controlled foreign corporation's U.S. property is measured as the average of the adjusted basis (as determined for purposes of calculating earnings and profits) of such property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of its taxable year, less any liability to which the property is subject (as under

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present law). The committee intends ****932*701** that the measurement of assets as of the close of each quarter of the taxable year shall disregard short-term loans or other temporary arrangements with regard to the corporation's assets, where one of the principal purposes of such an arrangement was to avoid taking assets into account for purposes of this provision. Examples of what the IRS views as such arrangements are discussed in Rev. Rul. 89–73 (1989–1 C.B. 258), interpreting present law.

The bill is not intended to change the measurement of U.S. property that may apply, for example, in the case of certain short-term obligations, as provided in IRS Notice 88–108 (1988–2 C.B. 445), interpreting present law. Obligations subject to the special treatment of IRS Notice 88–108 are those that are collected within 30 days of their issuance, but the exclusion of such short-term obligations does not apply if the controlled foreign corporation holds obligations that would constitute U.S. property if held by the controlled foreign corporation on the date of measurement (determined without regard to this 30-day rule) for aggregate periods totalling at least 60 days in the taxable year, without regard to whether any such obligations are held on the date of measurement.

Study on investments in U.S. property

The committee understands that a controlled foreign corporation is not treated as holding U.S. property under section 956 if it invests in an obligation of an unrelated U.S. corporation. A similar rule, however, is not applicable to an investment in an obligation of an unrelated U.S. person other than a corporation. The bill provides that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and provide the Committee on Ways and Means with a report of such study by December 31, 1993. The study is to include the Treasury's views as to whether those rules should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

Same-country dividend rule

The bill limits the application of the same-country exception to the determination of subpart F income in the case of certain dividends received by controlled foreign corporations. Amounts distributed with respect to stock owned by the controlled foreign corporation do not qualify for the same-country exception to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when the controlled foreign corporation did not hold the stock. The bill's limitation applies, and thus the same-country exception does not apply, even in cases where the controlled foreign corporation receiving the distribution did not exist at the time the distributed earnings and profits were accumulated, but the stock of the distributing corporation was held by the shareholders of the receiving corporation at such time.

The committee intends that no inference be drawn from the bill as to the proper interpretation of temporary Treas. reg. sec. 1.954–2T(b)(3)(iii) (which also imposes limitations on the same-country exception from the treatment of dividends as subpart F income).

****933*702** Effect on foreign tax credit limitation of distributions of previously taxed earnings

Under the bill, receipt of a distribution of previously taxed income by a U.S. shareholder of one or more controlled foreign corporations increases the U.S. shareholder's foreign tax credit limitation to the extent of the aggregate amount in a single "excess limitation account" maintained by that U.S. shareholder for each of its separate foreign tax credit limitation categories. That account reflects the cumulative amount by which the U.S. shareholder's foreign tax credit limitation had been increased on account of subpart F income inclusions (in excess of the foreign taxes allowed as a credit on account of such inclusions) in taxable years beginning after September 30, 1993, less the total amount by which the account was used to increase the U.S. shareholder's foreign tax credit limitation upon prior distributions of previously taxed earnings and profits.

The treatment described in the paragraph above applies to a taxpayer that (1) chose to have the benefits of the foreign tax credit for a taxable year beginning after September 30, 1993, in which that taxpayer had an inclusion of subpart F income (if there were creditable foreign taxes paid or accrued for that year); (2) chooses to have the benefits of the foreign tax credit for

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any taxable year in which earnings that were so included are actually distributed and treated as previously taxed; and (3) pays, is deemed to pay, or accrues creditable foreign taxes for the year in which the distribution is received. The committee intends that any distribution in a taxable year beginning after September 30, 1993, be treated as comprising earnings attributable to taxable years beginning after September 30, 1993, to the extent of such earnings, then earnings attributable to taxable years beginning prior to October 1, 1993. The committee anticipates that Treasury regulations will provide guidance as to the application of these provisions in the case of taxpayers that choose to have the benefits of the foreign tax credit in some but not all years.

In the case of a foreign tax credit carryback to a taxable year beginning after September 30, 1993, the increase in the excess limitation account resulting from subpart F income inclusions for that taxable year is reduced by the amount of foreign taxes allowed as a credit by reason of the carryback, if such foreign taxes would not have been allowed as a credit for that year but for the subpart F income inclusions for that year.

Modification of certain PFIC rules in the case of U.S. shareholders of controlled foreign corporations

Measurement of assets

The bill modifies the present-law rules for applying the PFIC asset test in the case of U.S. shareholders of controlled foreign corporations. In testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," under the bill, assets are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

****934*703** Treatment of certain securities dealers

The bill excludes from the definition of passive income under the PFIC rules income derived in the active conduct of a securities business by certain corporations registered in the United States as brokers or dealers in securities, and, to the extent provided in Treasury regulations, income so derived by any other corporation engaged in the active conduct of a trade or business as a broker or dealer in securities. As with the asset-valuation rule above, this exclusion applies only to a controlled foreign corporation, and only for purposes of the treatment of its U.S. shareholders. The bill provides that similar rules apply in determining whether the income of a related person is passive (whether or not the related person is a corporation), solely for purposes of classifying amounts paid to a controlled foreign corporation as passive or not pursuant to the PFIC related-person rule (sec. 1296(b)(2)(C)).[70]

The committee anticipates that Treasury regulations will provide guidance as to what constitutes the active conduct of a trade or business as a broker or dealer in securities. The committee further anticipates that such regulations will provide that income derived from the performance of bona fide securities-related activities in the course of the active conduct of such a business generally will be treated as income other than passive income.

The committee intends that, in practice, the effect of this provision shall be only to mitigate the effect of the PFIC rules and the excess passive assets rules on a company insofar as it is actively engaged in the business of providing the services of a financial intermediary to unrelated parties, rather than used as a vehicle for investment in stock, securities, or other financial products on behalf of its shareholders or other related parties. There are other instances in the Code and regulations where it is necessary to draw similar distinctions, and the Treasury is invited to consider whether any tests employed in those provisions are suitable in light of the purposes of this provision.

For example, the controlled foreign corporation rules may require a determination as to whether a foreign corporation is a regular dealer (within the meaning of section 954(c)(1)(B)) in stocks, securities, or derivative financial products during its taxable year. As another example, the PFIC rules exempt a foreign corporation, to the extent provided in regulations, from passive characterization of its income from the active conduct of a banking business. Guidance has been issued under that provision analogous to the guidance that might be issued under this provision of the bill. As a third example, guidance has been issued under the foreign tax credit limitation regulations for identifying financial services entities.

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As in the cases of the PFIC bank rules and the foreign tax credit limitation rules on financial services entities, the committee believes ****935*704** that the Treasury could consider a variety of activities that may indicate the existence of an active securities business.[71]

In addition, in appropriate circumstances, the Treasury might consider it relevant that a foreign corporation is or is not registered or authorized in the country in which it conducts its principal securities broker or dealer operations to conduct the bona fide securities activities that it performs in that country, and is subject to the appropriate securities regulatory authorities of that jurisdiction.[72]

The foregoing list of possible approaches and factors to take into account is not intended to be exclusive of other approaches or factors not mentioned. Nor is it intended to suggest that the presence of any of the factors mentioned above, or the passing or failing of any test existing under present law, must be used by Treasury to ****936*705** determine the outcome of the question whether a foreign corporation is engaged in the active conduct of a trade or business as a broker or dealer in securities. The committee does not intend to limit the Treasury's discretion to fashion rules suitable to the purposes of the provision.

As under the exceptions for active banking and insurance income of Code section 1296(b)(2), the committee intends that the Secretary's regulatory authority under the bill be exercised so as to apply the PFIC provisions to any income derived by persons engaged in bona fide securities-related activities where necessary to prevent individuals from earning what is essentially tax-deferred portfolio investment income through a foreign corporation. Also, as under section 1296(b)(2), the committee intends that income derived by persons engaged in bona fide securities-related activities that are basically widely-held incorporated investment vehicles will be treated as passive for purposes of the PFIC definition. Under existing law, any allocation of passive income earned by, or passive assets held by, a foreign corporation to stock held by particular shareholders of the corporation (e.g., to foreign shareholders that are not subject to the PFIC provisions) is not respected for purposes of the application of the PFIC provisions to that foreign corporation and its shareholders. Accordingly, in the case of a controlled foreign corporation that is eligible for the securities exception, the committee intends that any allocation of particular items of income or assets to stock held by particular shareholders of the foreign corporation not be respected for purposes of the application of the PFIC and excess passive asset provisions to that foreign corporation and its shareholders.

Treatment of certain income inclusions as distributions

Under the bill, inclusions of income on account of investments of earnings of a controlled foreign corporation in U.S. property, or ownership of excess passive assets, are treated as distributions for purposes of computing the interest charge on excess distributions to the U.S. shareholders of PFICs that are controlled foreign corporations. Accordingly, such inclusions of income are subject to treatment as excess distributions under section 1291(b) of the PFIC rules. Such inclusions of income are taken into account as amounts received with respect to the PFIC stock (e.g., in prior years) in the determination of whether or not there is an excess distribution for the taxable year.

Treatment of certain leased assets for PFIC purposes

The bill treats certain leased property as assets held by the foreign corporation for purposes of the PFIC asset test. This rule applies to tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months. Under the bill, the measure of leased property for purposes of applying the asset test is the unamortized portion of the present value of the payments under the lease. The committee intends that regulations provide guidance for determining the unamortized portion of the present value of the payments. Present value is to be determined, under regulations, as of the beginning of the lease term, and, except as provided in regulations, by using ****937*706** a discount rate equal to the applicable Federal rate determined under the rules applicable to original discount instruments (sec. 1274(d)), substituting under those rules the term of the lease for the term of the debt instrument. In applying those rules, options to renew or extend the lease are not to be taken into account. Also, the special rule to be applied under section 1274(d)(2) in the case of a sale or exchange is disregarded. Property leased by a corporation is not taken into account in testing for PFIC status under the asset test either if the lessor is a related person (as that term is defined under the foreign base company rules) with respect to the lessee, or if a principal purpose of leasing the property was to avoid the PFIC provisions.

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EFFECTIVE DATE

In general

The bill generally is effective for taxable years of foreign corporations beginning after September 30, 1993, and for taxable years of domestic shareholders in which or with which such taxable years end.

Transition rule for treatment of excess passive assets

The excess passive assets provision will be phased in during taxable years beginning after September 30, 1993, and before October 1, 1997. The amount of income included under the provision will be 20 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1993, and before October 1, 1994; 25 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1994, and before October 1, 1995; 35 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1995, and before October 1, 1996; and 50 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1996, and before October 1, 1997. The provision will be fully effective for taxable years beginning after September 30, 1997.

Corporations that become subject to the provision after the beginning of the phase-in period will join the phase-in schedule in progress. For example, in the case of a foreign corporation that uses the calendar year as its taxable year, which corporation becomes a controlled foreign corporation as of January 1, 1996, the amount of income included under the provision will be 35 percent of the amount otherwise determined with respect to 1996, 50 percent of the amount otherwise determined with respect to 1997, and 100 percent with respect to 1998 and all subsequent years.

Transition rule for distribution of previously taxed earnings

The provision modifying the rules for increasing the foreign tax credit limitation upon distributions of previously taxed income is effective for actual distributions of earnings that are included under subpart F in taxable years of U.S. shareholders beginning after September 30, 1993. In the case of any distributions of earnings that were included under subpart F in taxable years of U.S. ****938*707** shareholders beginning prior to October 1, 1993, the rules of present law will continue to apply.

2. Allocation and apportionment of research and experimental expenditures (sec. 14234 of the bill and sec. 864(f) of the Code)

PRESENT LAW

Foreign tax credit and source rules

Under the Code, each item of income is assigned either a U.S. source or a foreign source. The foreign tax credit for foreign taxes paid on foreign source income is limited to the amount of U.S. tax otherwise payable on foreign source income. The foreign tax credit is not available against U.S. tax on U.S. source income. (This is known as the foreign tax credit limitation.) A shift in the source of income from foreign to U.S. may increase net U.S. tax for some taxpayers by reducing the foreign tax credit limitation.

In determining foreign source taxable income for purposes of computing the foreign tax credit limitation, and for other tax purposes, taxpayers are required to allocate and apportion expenses between foreign source income and U.S. source income (Code secs. 861–864). A shift in the allocation and apportionment of expenses from U.S. source to foreign source gross income decreases foreign source taxable income, and may increase U.S. tax by reducing the foreign tax credit limitation.

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Research and experimental expense allocation regulation

Treasury regulation section 1.861–8 (promulgated in 1977) sets forth detailed rules for allocating and apportioning several categories of expenses, including deductible research and experimental expenditures ("research expense"). The regulation provides that research expense is ordinarily considered definitely related to all gross income reasonably connected with one or more of 32 product categories based on two-digit classifications of the Standard Industrial Classification ("SIC") system. Research expense is not traced solely to the income generated by the particular product which benefitted from the research activity. Instead, it is associated with all the income within the SIC product group in which the product is classified.

The Treasury regulation contemplates that taxpayers will sometimes undertake research solely to meet legal requirements imposed by a particular governmental entity with respect to improvement or marketing of specific products or processes. In some cases, such research cannot reasonably be expected to generate income (beyond de minimis amounts) outside that governmental entity's jurisdiction. If so, the deductions allowable for the associated research expense are allocated solely to gross income from the geographic source that includes that jurisdiction.

After research expense incurred to meet legal requirements is allocated under the above rule, any remaining research expense generally is apportioned to foreign source income based on the ratio of total foreign source sales receipts in the SIC product group with which the expense is identified to the total worldwide sales receipts in that product group (the "sales" or "gross receipts" method). In ****939*708** computing this fraction, sales by a party controlled or uncontrolled by the taxpayer may be taken into account if the party can reasonably be expected to benefit from the research expense. However, the regulation provides that a taxpayer using the sales method may first apportion at least 30 percent of research expense remaining after allocation to meet legal requirements exclusively to income from the geographic source where over half of the taxpayer's research and development is performed.

Thus, for example, a taxpayer that performs more than 50 percent of its research and development in the United States may automatically apportion at least 30 percent of its remaining research expense to U.S. source income. A taxpayer can choose to apportion to the geographic source where more than 50 percent of its research and development is performed a percentage of research expense significantly greater than 30 percent if the taxpayer establishes that the higher percentage is warranted because the research and development is reasonably expected to have a very limited or long-delayed application outside that geographic source.

Alternatively, subject to certain limitations, a taxpayer may elect to apportion its research expense remaining after any allocation to meet legal requirements under one of two optional gross income methods. Under these optional methods, a taxpayer generally apportions its research expense on the basis of relative amounts of gross income from U.S. and foreign sources. If a taxpayer makes an automatic place-of-performance apportionment, the taxpayer may not use either optional gross income method.

The basic limitation on the use of the optional gross income methods is that the respective portions of a taxpayer's research expense apportioned to U.S. and foreign source income using these methods can not be less than 50 percent of the respective portions that would be apportioned to each income grouping using sales method (including the place-of-performance apportionment).

If this 50-percent limitation is satisfied with respect to both income groupings, the taxpayer may apportion the amount of its research expense that remains after allocation under the legal requirements test ratably on the basis of foreign and U.S. gross income. If the 50-percent limitation is not satisfied with respect to one of the income groupings, then the taxpayer must apportion to that income grouping 50 percent of the amount of its research expense which would have been apportioned to that income grouping under the sales/place-of-performance method. A taxpayer electing an optional gross income method may be able then to reduce the amount of its research expense apportioned to foreign source income to as little as one-half of the amount that would be apportioned to foreign source income under the sales method.

For example, consider a taxpayer with $110 of U.S.-performed research expense and equal U.S. and foreign sales. Assume that $10 of the research expense is to meet U.S. legal requirements and is allocated to U.S. source income. Of the remaining $100, 30 percent ($30) is exclusively apportioned to U.S. source income under the automatic place-of-performance rule and the remaining $70 is divided evenly between U.S. and foreign source income, using the sales method. Thus, under this method $35 would be allocated to foreign source income and $75 would be allocated to U.S. source income. ****940*709**

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Under the optional gross income methods, the $35 of research expense allocated to foreign sources can be reduced as much as 50 percent, to $17.50. This can occur, for example, if the foreign sales were made by a foreign subsidiary that did not repatriate earnings to the U.S. corporation, and thus a disproportionately high fraction of the U.S. corporation's income is from U.S. sources.

Statutory allocation of research and experimental expense

The Economic Recovery Tax Act of 1981 (ERTA) provided that, for a taxpayer's first two taxable years beginning within two years after the date of its enactment (August 13, 1981), all research and experimental expenditures (within the meaning of sec. 174) paid or incurred in those years for research activities conducted in the United States were to be allocated or apportioned to income from sources within the United States (sec. 223 of ERTA).

This two-year moratorium on the research expense allocation regulation was effectively extended for two additional years by the Tax Reform Act of 1984 (the "1984 Act"). Under section 126 of the 1984 Act, for taxable years beginning generally after August 13, 1983, and on or before August 1, 1985, all of a taxpayer's research and experimental expenditures (within the meaning of sec. 174) attributable to research activities conducted in the United States were to be allocated to income from sources within the United States.

One reason Congress cited for enacting the original two-year moratorium was that some foreign countries do not allow deductions under their tax laws for expenses of research activities conducted in the United States. Taxpayers argued that this disallowance caused U.S.-based research to be disadvantaged. First, U.S.-based research expense is deemed to be allocated to income from a foreign country which may not recognize that such amount is deductible. The allocation of this U.S.-based research expense to foreign source income had the effect of reducing the foreign tax credit of U.S. taxpayers. Because those taxpayers could take their deductions if the research occurred in the foreign country, taxpayers argued that there was an incentive to shift their research expenditures to those foreign countries whose laws disallow tax deductions for research activities conducted in the United States but allow tax deductions for research undertaken locally.

Accordingly, Congress concluded that the Treasury Department should study the impact of the allocation of research expense under the 1977 regulation on U.S.-based research activities and on the availability of the foreign tax credit. Pending the outcome of the study, Congress concluded that research expense should be charged to the cost of generating U.S. source income, regardless of whether the research was a direct or indirect cost of producing foreign source income.

On the ground that a reduction in research and development might adversely affect the competitive position of the United States, the 1983 Treasury report recommended the two-year extension of the moratorium that was ultimately enacted by Congress in 1984. The extension was intended to allow Congress to consider further the results of the Treasury study.

****941*710** The Consolidated Omnibus Budget Reconciliation Act of 1985 (the "1985 Act") extended the moratorium on the application of the research expense allocation regulation generally for one additional taxable year beginning after August 1, 1985, and on or before August 1, 1986.

The Tax Reform Act of 1986 (the "1986 Act") permitted the moratorium on application of the research expense allocation regulation to expire. However, for taxable years beginning after August 1, 1986, and on or before August 1, 1987, application of the regulation was liberalized by the 1986 Act in three respects, which were intended by Congress to provide an additional tax incentive to conduct research in the United States while Congress analyzed whether any additional permanent incentive was necessary.

The first liberalization under the 1986 Act was that for the specified one-year period, 50 percent of all remaining amounts allowable as a deduction for qualified research and experimental expenditures (that is, research and experimental expenditures within the meaning of section 174 that are attributable to activities conducted in the United States) after allocation of legally required research expense could be apportioned to U.S. source income. The 1986 Act thus had the effect of increasing the automatic place-of-performance apportionment percentage for U.S.-based research expense from 30 percent to 50 percent.

The 1986 Act further provided that, for the specified one-year period, the portion of those amounts allowable as a deduction

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for qualified research and experimental expenditures that remained after any legal requirements allocation and the 50 percent automatic place-of-performance apportionment were apportioned either on the basis of sales or gross income. Thus, the 1986 Act's second effective liberalization of the regulation was to allow the automatic place-of-performance apportionment temporarily to taxpayers who elected to apportion research expense using the optional gross income method, rather than only to taxpayers that used the standard sales method of apportionment.

Third, the 1986 Act had the effect of temporarily suspending the regulatory rule that prohibits taxpayers from using the optional gross income method to reduce allocation of research expense to foreign source income by more than 50 percent of the amount that would be allocated to foreign source income under the sales method.

The temporary modifications made by the 1986 Act to the research allocation regulation applied for purposes of computing taxable income from U.S. sources and taxable income from sources outside the United States. The modifications applied only to the allocation of expenditures for research and experimental activities conducted in the United States, and only for the purposes of geographic sourcing of income; the modifications did not apply for other purposes such as the computation of combined taxable income of a FSC (or DISC) and its related supplier. Also, the modifications did not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of depreciable or depletable property to be used in connection with research or experimentation.

****942*711** The Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") further modified, again on a temporary basis, the rules for sourcing research expense. These modifications were effective only for the first four months of a taxpayer's first taxable year beginning after August 1, 1987 (treating all applicable expenditures in that taxable year as if they were incurred ratably over the year). Generally, for the remainder of a taxpayer's first taxable year beginning after August 1, 1987, (and for subsequent taxable years), the research expense allocation regulation was applicable. Under the 1988 Act, the treatment of research expense incurred to meet certain legal requirements was unchanged. After applying the legal requirements rule, however, the 1988 Act modifications provided that 64 percent of the remaining U.S.-based research expense was allocated to U.S. source income and 64 percent of the remaining foreign-based research expense was allocated to foreign source income. Following that allocation, the remaining research expense was allocated and apportioned either on the basis of sales or gross income. However, if the gross income method of apportionment was utilized, the amount apportioned to foreign source income could be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The Omnibus Budget Reconciliation Act of 1989 (the "1989 Act") extended, again on a temporary basis, the rules for sourcing research expenditures that were contained in the 1988 Act. The 1989 Act also codified these rules in section 864(f) of the Internal Revenue Code. As codified in 1989, these rules were effective only for the first nine months of a taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990 (treating all applicable expenditures in that taxable year as if they were incurred ratably over the year). Under the 1989 Act, for the remainder of a taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990 (and for subsequent taxable years), the research expense allocation regulation was to apply.

The Omnibus Budget Reconciliation Act of 1990 (the "1990 Act") further extended the statutory allocation rules that were codified in the 1989 Act. Under the 1990 Act, the rules of section 864(f) applied to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991.

The most recent statutory extension of the rules of section 864(f) was included in the Tax Extension Act of 1991, which was applicable generally for the first six months of the first taxable year beginning after August 1, 1991. For this purpose total research expenses for the year were deemed to be incurred evenly throughout the year. For expenses deemed paid or incurred during the remainder of the year, the research expense allocation regulation applied.

On June 24, 1992, it was announced that the Treasury Department and the IRS had undertaken a review of the research expense allocation regulation, and that in light of this review, the IRS temporarily would not require that taxpayers apply the regulation (Rev. Proc. 92–56, 1992–28 I.R.B. 7, amplified by Rev. Proc. 92–69, 1992–36 I.R.B. 18). According to these Revenue Procedures, taxpayers would not be required to apply the regulation with respect to research expenses incurred during what would ordinarily be an 18-month transition period–that is, the last six months of the taxpayer's ****943*712** first taxable year beginning after August 1, 1991 and the immediately succeeding taxable year–provided that such expense was

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allocated and apportioned in accordance with a method based on the temporary statutory provision, described above, applicable generally through the first six months of the first taxable year beginning after August 1, 1991. The Revenue Procedures stated that this transition method was not intended to suggest any views about the proper allocation and apportionment of research expense, and that it was intended solely to provide taxpayers with transition relief and to minimize audit controversy and facilitate business planning during the conduct of the regulatory review.

REASONS FOR CHANGE

In the 12 years since the first temporary moratorium on the 1977 regulation was enacted, Congress, the Treasury Department, and representatives of affected industries have intensely scrutinized the effects of the research expense allocation rules on research activities.[73] That scrutiny has not resulted in an unambiguous recommendation regarding the appropriateness of allocating U.S.-based research expense to U.S. source income under either the 1977 regulation, the complete moratorium, or the partial moratoria of the 1986 and subsequent Acts. On the one hand, there are those who argue that the moratorium and the partial moratoria had a beneficial effect on U.S. research activity and on U.S. competitiveness in worldwide markets. On the other hand, there are those whose studies prompt them to conclude otherwise. Furthermore, the tax costs of both the total and the partial moratoria have been significant, and the tax benefits they have bestowed are distributed somewhat arbitrarily among taxpayers. At the same time, these taxpayers have faced a prolonged period of uncertainty as to the research expense allocation rules that will apply in the coming years, making it more difficult for them to predict the after-tax costs of the research in which they generally must engage, if at all, over extended future periods.

The committee believes that the period of uncertainty with respect to future years' tax rules should come to an end. The committee believes that the adoption of rules which are to be applied prospectively on a permanent basis should enhance the research and development activities of U.S. companies.

EXPLANATION OF PROVISION

The bill makes permanent the research allocation rules of Code section 864(f), except that the portion of research expense automatically allocated and apportioned to income sourced in the place of performance of the research is 50 percent, rather than 64 percent. Thus, for research expense other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source, 50 percent of U.S.-incurred research expense is allocated and apportioned to U.S. source income, and 50 percent of foreign-incurred research expense is allocated and apportioned to ****944*713** foreign source income. The remaining research expense is allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment is used, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The bill provides regulatory authority for the implementation of certain adjustments regarding section 936 companies. In addition, the bill authorizes the Treasury to prescribe such regulations as may be appropriate to carry out the purposes of this provision, including regulations relating to the determination of whether research activities are conducted inside or outside the United States and making such adjustments as may be appropriate in the case of cost sharing arrangements and contract research.

EFFECTIVE DATE

The provision applies to taxable years ending after date of enactment, except that it does not apply to any taxable year to which Rev. Proc. 92–56 applies, or would have applied had the taxpayer elected the benefits of that Revenue Procedure.

3. Eliminate working capital exception for foreign oil and gas and shipping income (sec. 14235 of the bill and secs. 904(d), 907, and 954 of the Code)

PRESENT LAW

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Foreign tax credit separate limitations

Foreign tax credit limitations are computed separately for certain categories of foreign source income, including passive income, high withholding tax interest, financial services income, shipping income, dividends from each noncontrolled section 902 corporation, certain distributions from DISCs and FSCs, certain types of income earned by a FSC, and all other (i.e., "overall basket" or "general basket") income. Passive income generally includes income which is of a kind which would be foreign personal holding company income as defined under Code section 954(c) (e.g., interest and dividends) and typically is not subject to high levels of foreign tax. The separate limitation for passive income generally prevents the cross-crediting of high foreign taxes on income which falls in the general basket against the residual U.S. tax on passive income.

The separate foreign tax credit limitation for passive income was enacted in 1986 and replaced the prior law separate foreign tax credit limitation for passive interest income.[74] Prior law excluded from the passive interest separate limitation category interest derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country. Regulations under prior law expressly treated certain types of interest from working capital as interest derived from a transaction which is directly related to the active conduct of a trade or business.[75] No such general working capital exception exists under the ****945*714** passive income definition as established in 1986. As a result of the interaction of the Code and pre-1987 Treasury regulations, however, the working capital exception has been retained for the oil and gas and shipping industries.[76]

Special limitation on credits for foreign extraction taxes and taxes on foreign oil related income

In addition to the foreign tax credit limitations that apply to all foreign tax credits, a special limitation is placed on foreign income taxes on foreign oil and gas extraction income (FOGEI). Under this special limitation, amounts claimed as taxes paid on FOGEI of a U.S. corporation qualify as creditable taxes (if they otherwise so qualify) only to the extent they do not exceed the product of the highest marginal U.S. tax rate on corporations (presently 34 percent) multiplied by such extraction income. Foreign taxes paid in excess of that amount on such income are, in general, neither creditable nor deductible (unless a credit carryover provision applies).

A similar special limitation may apply to foreign taxes paid on foreign oil related income (FORI) in certain cases where that type of income is subjected to a materially greater level of tax by a foreign jurisdiction than non oil and gas income generally would be. Under this limitation, a portion of the foreign taxes on FORI may be deductible, but not creditable.

As previously described, regulations issued prior to 1986 and still effective define FOGEI and FORI to include interest on working capital related to extraction or oil related activities, as the case may be.[77] Thus, under current regulations, FOGEI and FORI include what generally would be considered as passive income for foreign tax credit limitation purposes.

REASONS FOR CHANGE

The committee understands that for taxpayers not engaged in oil and gas or shipping operations, present law treats interest income on working capital as subject to the separate foreign tax credit limitation****946*715** for passive income. For the reasons stated in connection with the adoption of the separate foreign tax credit limitation for passive income in 1986, the committee believes that this is appropriate.[78] The committee also believes that the foreign tax credit rules should operate fairly and uniformly to all taxpayers. Thus, the committee believes it is appropriate to conform the rules that apply to the treatment of passive income earned by taxpayers with oil and gas and shipping operations with the rules that apply to similar income earned by other taxpayers.

Similarly, as a general principle, the statutory FOGEI and FORI rules of section 907 are intended to prevent the crediting of high foreign taxes on FOGEI and FORI against the residual U.S. tax on other types of lower-taxed foreign source income. However, for example, if a taxpayer has both high-taxed FOGEI, and also FOGEI which bears little or no foreign income tax, such as interest income on working capital, the current rules permit high FOGEI taxes to be credited against the residual U.S. tax on that interest income. The committee believes that this result is inappropriate.

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EXPLANATION OF PROVISION

In general

The bill prevents the cross-crediting of foreign taxes on FOGEI, FORI, and shipping income by placing certain passive income related to oil and gas and shipping operations in the passive category for foreign tax credit limitation purposes. In addition, the bill excludes certain passive income related to foreign oil and gas extraction or other foreign oil related activities from the computation of the FOGEI and FORI foreign tax credit limitations.

Foreign tax credit separate limitations

With respect to the separate foreign tax credit limitation for passive income, the bill eliminates the present-law exclusion of FOGEI from the definition of passive income. Thus, if a taxpayer has gross income that falls within the definition of passive income under section 904, and also satisfies the definition of FOGEI under section 907, the income would be treated as passive income in determining the taxpayer's foreign tax credit.

In addition, the bill amends the present-law rule applicable to income which by definition qualifies both as foreign personal holding company income under section 954(c) and as foreign base company oil related income under section 954(g). The bill provides that such income is to be treated as foreign personal holding company income. As such, the income generally would be passive income for foreign tax credit purposes.

Likewise, the bill specifies that dividend or interest income that by definition qualifies as both foreign personal holding company income and foreign base company shipping income is to be treated as foreign personal holding company income. Thus, for foreign tax credit purposes, the income would fall in the passive basket rather than in the separate basket for shipping income.

****947*716** Special FOGEI and FORI limitations

The bill provides that the term "foreign oil and gas extraction income" does not include any dividend or interest income which is passive income as defined for foreign tax credit limitation purposes. Since, as discussed above, the bill treats gross interest income on working capital related to foreign oil and gas extraction activities, for example, as passive income, such income is not considered FOGEI for purposes of computing the special limitation for foreign taxes paid on FOGEI.

In addition, the bill specifies that the term "foreign oil related income" does not include any dividend or interest income which is passive income as defined under the foreign tax credit provisions. As a result, for example, gross interest income on working capital related to activities which generate foreign oil related income would not be treated as FORI for purposes of computing the special limitation for foreign taxes paid on FORI.

EFFECTIVE DATE

The provision applies to income earned in taxable years beginning after December 31, 1992.

4. Transfer pricing initiative (sec. 14236 of the bill and sec. 6662 of the Code)

PRESENT LAW

Penalties for valuation misstatements

Valuation questions are frequently central to disputes between taxpayers and the IRS. Certain types of valuation

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misstatements are subject to penalty. A "substantial" valuation misstatement may result in a penalty of 20 percent of the underpayment of tax attributable to the misstatement (sec. 6662 (a) and (b)(2)). The penalty for a "gross" valuation misstatement is 40 percent of the tax underpayment (sec. 6662(h)).

As in the case of accuracy-related penalties generally under section 6662, no valuation misstatement penalty is imposed if it is shown that there was reasonable cause for the underpayment of tax and that the taxpayer acted in good faith (see sec. 6664(c)). No valuation misstatement penalty is imposed if the portion of the underpayment for the taxable year attributable to substantial valuation misstatements does not exceed $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company).

The term "substantial valuation misstatement" includes three types of misstatement (sec. 6662(e)). It includes claiming on a tax return that the value of any property is 200 percent or more of the amount determined to be correct. The term "gross valuation misstatement" refers to three similar, but more extreme, forms of misstatement (sec. 6662(h)). It includes claiming on a tax return that the value of any property is 400 percent or more of the amount determined to be correct.

****948*717** Misstatement penalties and section 482 adjustments

The two other types of substantial valuation misstatement and gross valuation misstatement are defined by provisions enacted in the Omnibus Budget Reconciliation Act of 1990 (the "1990 Act"). These provisions address certain cases involving transactions between persons under common ownership or control, as those terms are used in section 482. The IRS Commissioner has the authority in such cases to distribute, apportion, or allocate income, deductions, credits, or allowances between or among such persons where the Commissioner determines it to be necessary in order to prevent evasion of taxes or clearly to reflect income.

Under the 1990 Act, a substantial valuation misstatement includes claiming a price for any property or services (or use of property), in connection with any transaction between persons described in section 482, that is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of the price.[79] In addition, under the 1990 Act there is a substantial valuation misstatement if the net section 482 transfer price adjustment for the taxable year exceeds $10 million.[80] The net section 482 transfer price adjustment is the net increase in taxable income for a taxable year resulting from adjustments under section 482 in the price for any property or services (or use of property).

Certain increases in taxable income resulting from section 482 adjustments are disregarded in determining whether a taxpayer's net section 482 transfer price adjustment exceeds the $10 million or $20 million thresholds. A net increase in taxable income attributable to a price redetermination is disregarded, for example, if it is shown that there was a reasonable cause for the taxpayer's determination of the price, and that the taxpayer acted in good faith with respect to the price (sec. 6662(e)(3)(B)(i)).[81]

Regulations under sections 482, 6662, and 6664: Final, temporary, and proposed

Current penalty regulations

There are no temporary or final regulations specifically addressed to the 1990 Act valuation misstatement penalties relating to section 482 adjustments. There is a final regulation under the reasonable cause/good faith exception that applies generally to all valuation misstatement penalties and other accuracy-related penalties under Code section 6662 (Treas. Reg. sec. 1.6664–4). Under this regulation, the determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor in making the determination is the extent of the taxpayer's effort to assess its proper tax liability. Circumstances ****949*718** that may or may not indicate reasonable cause and good faith are described in the regulation.

Proposed penalty regulations on net section 482 transfer price adjustments

In January 1993 the Treasury Department published a proposed regulation specifically addressed to the 1990 Act valuation

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misstatement penalty provisions (58 Fed. Reg. 5304 (Jan. 21, 1993)). The proposed regulation would provide exclusive rules for determining the circumstances in which reasonable cause and good faith would and would not reduce or eliminate penalties that would otherwise apply to net section 482 transfer price adjustments in excess of $10 million or $20 million.[82] By its terms, the proposed regulation would apply to taxable years beginning after April 21, 1993.

Under the proposed regulation, there are two elements to the reasonable cause and good faith exclusion from the definition of a net section 482 transfer price adjustment.[83] Both elements must be satisfied by the taxpayer to prevent imposition of the penalty.

The proposed regulations state that the first element is a reasonable effort by the taxpayer to accurately determine its proper tax liability. This determination must be made no later than the time the return is filed for the tax year, and documentation must be contemporaneous with that determination. The documentation must include an analysis indicating that the result was an arm's length result within the meaning of the regulations promulgated under section 482. It is presumed that the taxpayer did not make a reasonable effort to accurately determine its proper tax liability if it possesses contemporaneous documentation of how a transfer price was determined, but does not provide the documentation to the IRS within 30 days of an IRS request.

The second element of the reasonable cause and good faith exclusion is whether the taxpayer reasonably believed that its transfer pricing methodology produced an arm's length result. The proposed regulation states that the determination of whether the taxpayer has such a reasonable belief is made in light of the experience and knowledge of the taxpayer. Various factors are discussed that may be taken into account in making that determination.

Section 482 regulations

Final regulations under section 482 are in force, and have not been amended since 1988. In January 1993, however, the Treasury Department promulgated temporary regulations under section 482, generally effective for taxable years beginning after April 21, 1993. ****950*719** These temporary regulations amend aspects of the existing final section 482 regulations.

The temporary regulations would, for example, revise the circumstances under which taxpayers may use a method not specified in these regulations, in order to establish the arm's length consideration for a "controlled transaction"–a transaction between members of a commonly controlled group of taxpayers–involving the transfer of tangible or intangible property. (Any method not specified in the section 482 regulations has popularly been referred to in the past as a "fourth method," in light of the fact that many cases involve transactions for which the final regulations specify only three methods.)

Under the temporary section 482 regulations, a taxpayer may use such an unspecified method only if three conditions are satisfied (Treas. Reg. secs. 1.482–3T(e)(2) and 1.482–4T(d)(2)). First, the taxpayer must disclose the use of the method by attaching an appropriate disclosure statement to the timely filed U.S. income tax return for the taxable year of the controlled transaction. Second, the taxpayer must prepare contemporaneous supporting documentation setting forth (a) the specific analysis adopted, (b) an analysis of why the method used provides the most accurate measure of an arm's length price, and (c) the data supporting its application. Third, within 30 days of a written request, the taxpayer must furnish this documentation to the IRS district director.

REASONS FOR CHANGE

The committee is aware that section 482 disputes between taxpayers and the IRS continue to impose significant administrative burdens on the parties; and the committee continues to be concerned about the amount of revenue that is potentially lost by the Treasury due to difficulties in exercising the Secretary's authority to adjust income under section 482.

The committee is concerned, for example, about any case where a taxpayer uses related party transfer prices or other arrangements with no apparent consideration as to whether the taxable income reported, and the tax paid, conforms with the standards made applicable by section 482. The committee believes that the threat of penalties for substantial and gross valuation misstatements, as amended in 1990, might discourage such behavior, so long as the conditions under which the penalties may be imposed are sufficiently broad and well-defined.

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The committee believes that current law is deficient in this respect, however. According to the Administration, the IRS has not attempted to apply the transfer pricing related penalties since their enactment in 1990.[84] Moreover, the minimum amount of net section 482 transfer price adjustment necessary before a penalty can apply is too great in the committee's view. In addition, the committee questions the usefulness of the debate that ensues upon audit as the IRS examiner seeks to determine a reasonable intercompany price and the taxpayer and its representatives attempt to create post hoc arguments to justify a tax return position that was taken ****951*720** with little or no regard whether it could be justified under section 482 standards. The committee is instead inclined to agree with the view, expressed in the past, that administration of, and compliance with, section 482 will be improved by encouraging taxpayers "to document the methodology used in establishing intercompany transfer prices prior to filing the tax return" and to provide such documentation within a reasonable time after request.[85] The committee does not believe that a section 482 adjustment that exceeds the threshold generally should escape the penalty unless the taxpayer can show that the return position was arrived at after bestowing a reasonable amount of attention to the issue.

EXPLANATION OF PROVISION

In general

The provision creates new thresholds based on gross receipts for imposing the substantial valuation and gross valuation misstatement penalties in the case of a net section 482 transfer price adjustment. It also lowers the fixed dollar threshold for imposing the substantial valuation misstatement penalty in the case of a net section 482 transfer price adjustment. Finally, the provision replaces the statutory reasonable cause/good faith exception to the definition of the term "net section 482 transfer price adjustment" with a more objective exception that can be met by taxpayers that attend to potential section 482 issues at the time they file their tax returns. Taxpayers that do not meet the standard may not escape the penalties attached to a net section 482 transfer price adjustment by recourse to the general reasonable cause/good faith exception from the accuracy and fraud-related penalties.

Penalty thresholds

The threshold amount of net section 482 transfer price adjustment that generally triggers a substantial valuation misstatement penalty is lowered from $10,000,000 to $5,000,000. In addition, the term substantial valuation misstatement is expanded to include a case where the net section 482 transfer price adjustment for the taxable year exceeds 10 percent of the taxpayer's gross receipts. Under the bill the term gross valuation misstatement includes a case where the net section 482 transfer price adjustment exceeds 20 percent of gross receipts.

Definition of a net section 482 transfer price adjustment

In measuring the amount of a taxpayer's net section 482 transfer price adjustment, a net increase in taxable income attributable to a section 482 adjustment is to be disregarded only if the taxpayer satisfies one of two sets of statutory requirements. One such penalty "safe harbor" applies where the taxpayer determined a transfer price using a method specified in regulations; the other penalty safe harbor applies where the method used was not specified in the regulations. Satisfying the conditions for such a safe harbor does ****952*721** not affect the Commissioner's authority to make a section 482 adjustment.

Use of a specified method

The taxpayer meets the first set of requirements if it establishes that each of three criteria were met.

First, the taxpayer must establish that the price it used was determined under a pricing method specified in the section 482 regulations. For example, in a year governed by the temporary regulations under section 482 published in January 1993, a controlled transfer of tangible property could be subject to one of four "specified methods": the comparable uncontrolled

price method, the resale price method, the cost plus method, or the comparable profits method (Treas. Reg. sec. 1.482–3T(a)(1)-(4)). Any other method would not be a "specified" method for purposes of this penalty provision. The committee is aware that there are various other types of transactions, such as the performance of services which ****953** are an integral part of the business activity of the renderer, as described in Treas. Reg. sec. 1.482–2A(b)(7), that generally are not the subject of any pricing methods specified in the present section 482 regulations. In these cases, the Committee understands that it will not be possible for the taxpayer to avoid the penalty by establishing that it had met the criteria for using the safe harbor applicable to prices determined under a specified method, unless such regulations are subsequently revised to incorporate specific pricing methods.

Second, the taxpayer must establish that it applied the specified method reasonably. In order for the application of the method to have been reasonable, the committee intends that any procedural or other requirements imposed under the regulations must have been observed. For example, if adjustments required under a particular method were not made, the application of that method would not be reasonable. In addition, if more than one method is potentially applicable, the committee intends that in order to be applied reasonably, the method applied must be chosen under appropriate criteria (currently, the so-called "best method rule" set forth in Treas. Reg. sec. 1.482–1T(b)(2)).

Third, the taxpayer must establish that it had documentation, in existence as of the time of filing its original return, setting forth the reasonable determination of the price as described above. Upon an IRS request for the documentation, the taxpayer is required to provide it to the IRS within 30 days.

Use of an unspecified method

A taxpayer that did not apply a specified method in accordance with the above criteria may nevertheless have its net increase in taxable income attributable to a section 482 adjustment disregarded in determining the amount of its net section 482 transfer price adjustment. In order to do so, the taxpayer must meet each of three criteria.

First, the taxpayer must establish that none of the methods specified in the section 482 regulations was likely to result in a price that would clearly reflect income. With respect to those various types of transactions, such as the performance of services which ***722** are an integral part of the business activity of the renderer, as described in Treas. Reg. sec. 1.482–2A(b)(7), that generally are not the subject of any pricing methods specified in the section 482 regulations, it will be unnecessary to establish that no specified method would be likely to lead to a clear reflection of income; rather, it will be necessary to establish that no specified methods potentially apply.

Second, the taxpayer must establish that it used another method that was likely to result in a price that would clearly reflect income. Third, the taxpayer must establish that it had documentation, in existence as of the time of filing its original return, setting forth the determination of the price, establishing that the specified methods were not likely to result in a price that would clearly reflect income, and establishing that the method used was likely to result in a price that would clearly reflect income. Upon an IRS request for the documentation, the taxpayer is required to provide it within 30 days.

In establishing that no specified method was likely to result in a clear reflection of income, and that an unspecified method was likely to so result, the committee anticipates that it will be necessary for the taxpayer to set forth good and sufficient reasons why it reached these conclusions. For example, one reason that a particular specified method would not be likely to result in a clear reflection of income might be the unavailability of data relating to comparable uncontrolled transactions that would be necessary in order to apply that method. One reason that a particular unspecified method would be likely to result in a clear reflection of income might be that it properly took into account the significant factors which unrelated parties engaged in transactions at arm's length would have considered, and accorded appropriate weight to such factors.

Another reason that might be relevant in some cases would be the prior development by the IRS and the taxpayer, after a thorough review of the factors that account for a clear reflection of income under the particular circumstances that pertain to a particular taxpayer, of a particular agreed unspecified method. Such a method may be embodied, for example, in an advance pricing agreement. If the taxpayer's documentation establishes the prior agreement of the IRS, establishes that the taxpayer applied the agreed method reasonably and consistently with its prior application, and establishes that the facts and circumstances surrounding the use of the method have not materially changed since the time of the agreement, the committee anticipates that, for purposes of applying the penalty, the taxpayer generally will be treated as having established adequate

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justification for failure to use a specified method and its use instead of the unspecified method.

Rules applicable to uses of either a specified or unspecified method

In the case of a valuation misstatement due to a net section 482 transfer price adjustment, no penalty would be excused for reasonable cause and good faith unless the above requirements are met.

The committee intends that the application of any method would not be considered reasonable if the taxpayer became aware prior to ****954*723** filing its tax return that such application more likely than not did not result in a clear reflection of income.

Since the transfer pricing method that the taxpayer selects is to be applied prior to filing the tax return for the current taxable year, in some cases it only will be possible to apply such method based on data from a preceding year or years. Sole reliance on such data is acceptable (solely for purposes of section 6662(e)) unless more current reliable data becomes available prior to filing the tax return.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1993.

5. Deny portfolio interest exemption for contingent interest (sec. 14237 of the bill and secs. 871(h) and 881(c) of the Code)

PRESENT LAW

Deductibility of interest

As a general rule, a deduction is allowed for all interest paid or accrued on indebtedness. Whether a financial instrument is treated as debt for Federal income tax purposes depends on the facts of the particular case. Under existing law, an instrument may qualify as debt even if it provides the holder with significant equity participation rights. For example, the IRS has ruled that in certain cases, contingent interest paid on a shared appreciation mortgage loan used to finance the purchase of a personal residence may be deductible by a cash basis payor.[86] As another example, contingent interest based on a share of the borrower's profits has been determined to be deductible in certain cases.[87]

Interest received by foreign persons

The Code provides that U.S. source interest income earned by a nonresident alien individual or a foreign corporation that is not effectively connected with the conduct of a U.S. trade or business generally is subject to a gross-basis 30-percent withholding tax. A significant statutory exemption from that tax applies to so-called "portfolio interest" received by foreign persons.

Portfolio interest generally is defined as any U.S. source interest (including original issue discount) that is not effectively connected with the conduct of a trade or business and (1) is paid on an obligation that satisfies certain registration requirements or specified exceptions thereto, and (2) is not received by a 10-percent owner of the issuer of the obligation, taking into account shares owned by attribution.[88]

****955*724** Foreign investment in U.S. real property–shared appreciation debt

A foreign person's gain on the disposition of a U.S. real property interest (USRPI) is treated as income that is effectively connected with the conduct of a U.S. trade or business, and thus is subject to net-basis tax at ordinary U.S. income tax rates pursuant to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). USRPIs include interests (other than solely

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as a creditor) in (1) real property, and (2) domestic corporations that are U.S. real property holding corporations (USRPHCs).

Whether a financial instrument is considered debt under any provisions of the Code is not determinative of whether it constitutes an "interest solely as a creditor" for purposes of FIRPTA. Regulations provide that an interest in real property other than an interest solely as a creditor includes any right to share in the appreciation in the value of, or in the gross or net proceeds or profits generated by, the real property. Similarly, an interest in an entity (such as a USRPHC) other than an interest solely as a creditor includes any right to share in the appreciation in the value of an interest in, or the assets of, the entity, or a right to share in the gross or net proceeds or profits derived by, the entity.

Regulations further provide that amounts otherwise treated for tax purposes as principal and interest payments on debt obligations of all kinds (including obligations that are interests other than solely as a creditor) do not give rise to gain or loss that is subject to U.S. tax under FIRPTA.[89] Thus, a foreign owner of a note that pays interest contingent on appreciation in U.S. real property incurs U.S. income tax if he disposes of the note, but may not incur U.S. income tax if he holds the note and receives interest payments under its terms.

REASONS FOR CHANGE

The committee is concerned that the complete exemption from U.S. tax granted by the portfolio interest rules may give foreign investors a strong incentive to structure their U.S. investments which provide equity participation rights so that the returns therefrom will be characterized as interest income as opposed to other, taxable forms of income. The committee believes that such structuring of investments results in a significant erosion of the U.S. tax base, and that in such cases, allowance of the tax exemption is not appropriate. For example, the committee believes that the tax exemption should not apply in cases where a debt instrument held by a foreign investor pays interest that is contingent on profits generated from the disposition of U.S. real property held by the borrower.

Congress enacted the tax exemption for portfolio interest earned by foreign persons in 1984.[90] The exemption was enacted because Congress believed it important that U.S. businesses have direct access to the Eurobond market as a source of capital. In addition, ****956*725** Congress did not want withholding taxes on interest paid on portfolio debt or the necessity for U.S. borrowers to create uneconomic corporate structures in order to make the interest exempt from U.S. tax to impair borrowers' ability to utilize that market.[91] The committee believes that the limits placed on the scope of the portfolio interest exemption by the bill do not depart from the original purposes of the exemption.

EXPLANATION OF PROVISION

The bill makes the portfolio interest exemption inapplicable to certain contingent interest income received by foreign persons. In the case of an instrument on which a foreign holder earns both contingent and non-contingent interest, denial of the portfolio interest exemption applies only to the portion of the interest which is contingent interest.

Under the bill, contingent interest includes interest determined by reference to any of the following attributes of the debtor or any related person: receipts, sales, or other cash flow; income or profits; or changes in the value of property.[92] Thus, for example, the receipt by a foreign person of interest that is computed as a percentage of the borrower's profits would not be entitled to the tax exemption for portfolio interest. The bill does not treat interest as contingent merely because its payment can be impaired by a default on the debt obligation by the borrower.

In addition, contingent interest includes interest determined by reference to any dividend, partnership distribution, or similar payment made by the debtor or a related person. For example, interest is contingent under the bill where its receipt by the foreign investor is contingent upon the payment of a dividend to the shareholders of the corporate borrower.

The bill provides a number of exceptions to the general definition of contingent interest as detailed above. Under one such exception, interest is not considered contingent solely because the timing of the interest or any related principal payment is subject to a contingency. For example, assume that a debt obligation accrues fixed interest at a competitive market rate. If in any period prior to the instrument's maturity date the debtor has insufficient cash to make an interest payment, the debt agreement allows the borrower to defer the payment, but does not eliminate the borrower's liability for the deferred amount

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(or for interest that accrues on that amount). In this case, the interest is not considered contingent interest under the bill.

As another example, assume a debt obligation that is a regular interest in a Real Estate Mortgage Interest Conduit (REMIC) pays fixed interest at a competitive market rate. However, the period during which the debt obligation is to remain outstanding depends on the extent to which the qualified mortgages held by the REMIC are prepaid (and on other contingencies related to the income ****957*726** earned or expenses incurred by the REMIC). The interest received from the REMIC would not, because of this feature, be treated as contingent interest.

Portfolio interest treatment is not denied under the bill solely because the interest is paid with respect to nonrecourse or limited recourse indebtedness. For example, this exception would apply where a corporation issues a limited recourse debt instrument that pays fixed interest at a competitive market rate and is secured by trade receivables of the corporation.

Interest also is not denied portfolio treatment under the bill if all or substantially all of it is determined by reference to certain other amounts of interest that is not described as contingent above (or by reference to the principal amount of indebtedness on which such other interest is paid). An example of what is intended to be covered by this exception is a regular interest in a REMIC which pays annual amounts of interest equal to a percentage of the interest earned by the REMIC on qualified mortgages, where the interest earned by the REMIC is not considered contingent interest under the rules of the provision.

In determining whether all or substantially all of an amount of interest payable on a debt obligation is computed by reference to another amount of interest that is not contingent interest, other factors that affect the amount of interest payable on the debt obligation, but which are not contingencies as contemplated by the bill, are not taken into account. For example, assume a regular interest in a REMIC pays annual amounts of interest equal to the interest received by the REMIC on qualified mortgages in excess of an established threshold–the outstanding principal amounts on the qualified mortgages multiplied by a variable rate based on LIBOR[93] that is subject to a cap. Under the bill, the fact that the amount of interest paid by the REMIC varies inversely with LIBOR does not cause the interest to be treated as contingent interest.

Another of the bill's exceptions provides that interest is not denied portfolio treatment solely because the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest. Interest also is not denied portfolio treatment under the bill if it is determined by reference to changes in the value of (or any index of the value of) actively traded property other than a USRPI. For this purpose, the term "property" includes stock, and the term "actively traded" has the meaning given to that term under section 1092(d) of the Code. In general, portfolio treatment also is not denied if the interest is determined by reference to the yield (or any index of the yield) on such actively traded property. However, this exception for interest contingent on the yield of actively traded property does not apply if the property is a debt instrument that itself pays contingent interest as described above, or the actively traded property is stock or other property that represents a beneficial interest in the debtor or a related person.

By adding this set of exceptions, the committee intends to clarify that, for example, portfolio treatment is not denied in the case of ****958*727** a debt instrument that pays interest in an amount determined by reference to the value of a commodities index merely because the debtor hedges its interest rate risk on the debt by acquiring an offsetting position in commodities which produces a cash flow that correlates with the interest payments. As another example, portfolio treatment is not denied in the case of a debt instrument that pays interest in an amount determined by reference to the value of a stock market index merely due to the fact that an affiliate of the debtor holds stock which is publicly traded on that market.

The committee intends that the exceptions to the provision not be utilized by taxpayers to inappropriately avoid its application. For example, assume a corporation issues a nonrecourse debt obligation that accrues interest at a rate significantly in excess of the market rate. Pursuant to the provisions of that instrument, if in any period prior to the date of maturity of the obligation the debtor has insufficient cash flow to pay the interest, the obligation to pay the interest is deferred, but not eliminated. However, at the time of issuance of the obligation, the debtor and creditor reasonably expect that a significant portion of the accrued interest will be deferred, and ultimately will never be paid. In such a case, the committee intends that the exceptions to the application of the provision for nonrecourse indebtedness and for the timing of principal or interest payments should not apply. Thus, the interest received on the obligation would not qualify for portfolio treatment.

The bill provides that application of the provision may be extended to any type of contingent interest not specifically described in the bill, if identified by the Treasury Secretary in regulations. The Secretary is granted authority under the bill to

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issue such regulations to supplement the statutory description of contingent interest in order to address cases where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of U.S. income tax. The bill additionally provides that the Secretary may by regulation exempt any type of interest from denial, under the bill, of portfolio treatment.

The committee intends that the provision not override existing treaties that reduce or eliminate U.S. withholding tax on interest paid to foreign persons.

EFFECTIVE DATE

The provision applies to interest received after December 31, 1993. It does not apply, however, to any interest paid or accrued with respect to any indebtedness with a fixed term that was issued on or before April 7, 1993, or was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

6. Regulatory authority to address multiple-party financing arrangements (sec. 14238 of the bill and new sec. 7701(l) of the Code)

PRESENT LAW

The tax treatment of a transaction may depend on the identity of the parties to the transaction. For example, a loan by a controlled foreign corporation to a related U.S. borrower is treated as ***728** an investment in U.S. property under Code section 956, and as such, may result in an inclusion of income to U.S. shareholders of the foreign corporation. On the other hand, an income inclusion to the U.S. shareholders of the foreign corporation would not have resulted had the loan been made by the same foreign corporation to an unrelated foreign borrower.

Under the Code, payments of interest by U.S. persons to related foreign persons may be subject to 30-percent gross-basis withholding tax. On the other hand, no such tax applies to payments by U.S. persons to unrelated foreign persons of so-called portfolio interest. Under treaties, payments of interest by U.S. persons to related foreign persons who are resident in the treaty country may be subject to little or no U.S. gross-basis tax. By contrast, if the related recipient of interest is resident in a country with respect to which no U.S. income tax treaty is in force, the 30-percent gross-basis tax would be imposed.

Courts have stated that the incidence of taxation depends upon the substance of a transaction as a whole.[94] In certain cases, courts have recharacterized transactions in order to impose tax consistent with this principle. For example, where three parties have engaged in a chain of transactions, the courts have at times ignored the "middle" party as a mere "conduit," and imposed tax as if a single transaction had been carried out between the parties at the ends of the chain.

In Aiken Industries, Inc. v. Commissioner,[95] the Tax Court recharacterized an interest payment by a U.S. person on its note held by a related treaty-country resident, which in turn had a precisely matching obligation to a related non-treaty-country resident, as a payment directly by the U.S. person to the non-treaty-country resident. The transaction in its recharacterized form resulted in a loss of the treaty protection that would otherwise have applied on the payment of interest by the U.S. person to the treaty-country resident, and thus subjected the interest payment to 30-percent U.S. tax.

The IRS has taken the position that it will apply a similar result in cases where the back-to-back related party debt obligations are less closely matched than those in Aiken Industries, so long as the intermediary entity does not obtain complete dominion and control over the interest payments.[96] The IRS has taken an analogous position where an unrelated financial intermediary is interposed between the two related parties as lender to one and borrower from the other, as long as the intermediary would not have made or maintained the loan on the same terms without the corresponding borrowing.[97] In a recent technical advice memorandum, the IRS has taken the position that interest payments by a U.S. company to a related, treaty-protected financial intermediary may be treated as payments by the U.S. company directly to the foreign parent of the financial intermediary even though the matching payments ****960*729** from the intermediary to the parent are not interest payments, but rather are dividends.[98]

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REASONS FOR CHANGE

The committee is concerned that taxpayers may be inappropriately avoiding U.S. tax by intricately structuring financial transactions which utilize multiple entities, where one or more of those entities serve as a conduit. The committee believes that the above-cited IRS rulings appropriately ignore conduit entities and properly recharacterize the transactions described therein. However, the committee does not intend that the Secretary be bound, in developing regulations, by the standards on which those rulings are based, if the Secretary deems it necessary or appropriate to adopt other standards in order to properly recharacterize a financing transaction. In legislating in this area, it is not the intent of the committee to cast a negative inference on positions taken by the IRS under present law.

By granting regulatory authority to provide detailed rules in this complicated area, the committee seeks to bolster the Treasury's ability to prevent unwarranted avoidance of tax through multiple-party financial engineering, as well as to provide a mechanism for issuing additional guidance to taxpayers entering into financial transactions.

EXPLANATION OF PROVISION

The bill authorizes the Treasury Secretary to promulgate regulations that set forth rules for recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by the Internal Revenue Code.

The committee intends that the provision apply not solely to back-to-back loan transactions, but also to other financing transactions. For example, it would be within the proper scope of the provision for the Secretary to issue regulations dealing with multiple-party transactions involving debt guarantees or equity investments.

EFFECTIVE DATE

The provision is effective on date of enactment.

D. ENERGY AND MOTOR FUELS TAX PROVISIONS

1. Btu energy tax (sec. 14241 of the bill and new secs. 4441–4442, 4444–4446, 4448, 4451–4454, 4456–4457, and 6714 of the Code)

PRESENT LAW

No comprehensive Federal energy tax is imposed under present law. Specific Federal excise taxes are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, ****961*730** gasoline and special motor fuels used in motorboats, diesel fuel used in trains, fuels used in inland waterway transportation, and aviation fuels used in noncommercial aviation. Excise taxes also are imposed on coal from domestic mines and on crude oil received at domestic refineries and petroleum products entered into the United States.

Revenues from current energy-related excise taxes generally are deposited in various trust funds to finance specific Federal public works, environmental, or benefit programs.

REASONS FOR CHANGE

The committee believes that imposition of a broad-based energy tax will help the United States achieve the important goals of deficit reduction and energy conservation. The monies the energy tax will raise are an integral part of the efforts of Congress and the President to reduce the Federal deficit.

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In addition to deficit reduction, imposition of an energy tax will foster several worthwhile goals. First, the United States is one of the developed world's most intensive energy consumers. Most of the nation's energy is derived from non-renewable resources. Increasing the cost of non-renewable energy resources to individuals and businesses will provide an economic incentive to conserve these irreplaceable resources.

Second, the burning of fossil fuels contributes to atmospheric pollution and increases the potential for global warming. Consumers of fossil fuels do not directly bear the cost of the environmental damage pollution creates. Imposing an energy tax on the consumer of fossil fuels will give consumers a financial incentive to reduce energy use. The committee believes that providing an economic incentive to conserve on energy use, while also providing an incentive to use renewable resources, will lead to a cleaner environment.

Third, the committee believes it is particularly important to reduce our nation's dependence on imported petroleum and that a higher tax rate on petroleum will help reduce that dependence.

The committee believes it is appropriate to impose a tax on imported high-energy products that is intended to equal the tax that would have been imposed if the product had been manufactured in the United States.

The committee is also concerned about the effects of a tax on energy on low-income taxpayers. Therefore, it has provided for an increase in the earned income tax credit elsewhere in the bill to offset any potential hardship.

EXPLANATION OF PROVISIONS

Overview

The bill imposes Federal excise taxes on fossil fuels (i.e., coal, natural gas, and petroleum products) (other than those used to generate electricity), alcohol fuels (i.e., ethanol and methanol and their ether derivatives), and electricity.

Tax rates

A base rate of $0.268 per million Btu's is imposed on all fossil fuels. A supplemental tax of $0.342 per million Btu's (a total rate ***731** of $0.610 per million Btu's) is imposed on all taxable petroleum products other than heating oil used for space heating of buildings, diesel fuel and gasoline used on a farm for farming purposes, and liquefied petroleum gases (including natural gas liquids). Alcohol fuels also are taxed at a rate ****962** of $0.610 per millioN btu's.

The tax rate on electricity is calculated separately by each utility (or other electricity seller) on a monthly basis, based upon the fuel sources used by that person to generate electricity in the preceding month. When calculated, the rate is effective for electricity sold and used in the following month. For electricity generated with fossil fuels, the tax is based on the tax that would have been imposed on the fuel consumed. For electricity generated from hydropower or nuclear power, a per kilowatt hour rate is calculated using a statutory efficiency rate of 10,335 Btu's per kilowatt hour, and the base rate of $0.268 per million Btu's.

The stated tax rates will be phased in at one-third of the full rates beginning July 1, 1994, and at two-thirds of the full rates beginning July 1, 1995. The full rates will be effective beginning July 1, 1996.

On January 1 of each year beginning in 1998, the tax rates on all taxable energy sources will be indexed for inflation using the gross domestic product ("GDP") deflator.

Determination of Btu content

The actual measured Btu content of coal is used to determine the tax on coal.

For all other fossil fuels and alcohol fuels, the Btu content used to determine the tax for each type of fuel is statutorily

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specified. For this purpose, each of the taxable petroleum products (e.g., motor gasoline, distillate fuel oil) is treated as a separate type of fuel. For natural gas, the Treasury Department is authorized to promulgate regulations providing for the use of actual Btu content in calculating the tax. The Treasury Department further is authorized to modify the applicable Btu factor for any taxable product if it determines that the stated rate does not properly reflect the Btu content for that product.

Points of collection

The bill imposes the excise taxes at the points indicated below in the chain of distribution of each taxable product:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
****963*732** A back-up use tax is imposed on energy sources used before the points at which tax otherwise would have been imposed.

Liability and remittance of tax

The persons indicated below are liable for payment and remittance of the tax:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
In the case of the use tax, the user of the energy is liable for and remits the tax.

Structure of tax

Rate structure

Applicable rates.–The Btu energy tax consists of two additive rates. First, a base rate of $0.268 per million Btu's is imposed on all taxable fuels. Second, a supplemental tax of $0.342 per million Btu's (a total rate of $0.610 per million Btu's) is imposed on all alcohol fuels (i.e., ethanol, methanol, and their ether derivatives) and all taxable petroleum products other than: (a) heating oil (distillate fuel oil #2 (and kerosene when mixed with such distillate)) used for space heating of buildings, (b) gasoline and diesel fuel used on a farm for farming purposes, and (c) liquefied petroleum gases. For purposes of this calculation, the term "liquefied petroleum gases" includes natural gasoline, isopentene, ethane, ethylene, propane, propylene, normal butane, butylene, and isobutane, whether produced from a petroleum product or a natural gas stream (the products being commonly referred to as natural gas liquids in the latter case).

****964*733** The stated fossil fuel and alcohol fuel tax rates will be phased in at one-third of the full rates beginning July 1, 1994, and at two-thirds of the full rates beginning July 1, 1995. The full rates will be effective on July 1, 1996.

Thus, from July 1, 1994, through June 30, 1995, the base rate is $0.089 per million Btu's and the supplemental rate is $0.114 per million Btu's (for a combined rate of $0.203 per million Btu's). From July 1, 1995, through June 30, 1996, the base rate is $0.179 per million Btu's and the supplemental rate is $0.228 per million Btu's (for a combined rate of $.407 per million Btu's).

All electricity is subject to tax at a weighted average rate based on the fuel sources from which the electricity is generated. Therefore, each person selling electricity to an end user is required to calculate the tax rate for the electricity it generates separately from the tax rate applicable to other sellers. This calculation, described in more detail below, must be made on a monthly basis.

Inflation adjustments.–The applicable tax rates (both base and supplemental) are indexed annually for inflation, beginning on January 1, 1998. This adjustment is calculated by comparing the gross domestic product (GDP) deflator at June 30th of the preceding year with the GDP deflator at June 30, 1996. All indexing adjustments will be rounded to the nearest 0.1 cent.

Floor stocks taxes.–Floor stocks taxes are imposed on taxable products held for sale or for use (other than an exempt use) as a fuel beyond the applicable product's tax collection point on July 1, 1994, and on the date of each subsequent rate change

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(including each annual indexing change). The person holding a taxable product on the date each floor stocks tax is imposed is liable for the tax. A credit of up to $200 is provided to taxpayers to exempt small amounts of fuel from the tax. With this credit, each taxpayer may offset up to $200 of the aggregate amount of floor stocks tax that otherwise would be owed on the total of all taxable fuels held on the date the floor stocks tax is imposed. For purposes of the floor stocks tax and the credit, all members of a controlled group (as defined in sec. 52(a) and (b)) are treated as a single taxpayer. The $200 credit will be apportioned among the members of a controlled group in accordance with Treasury regulations.

Petroleum products and alcohol fuels

Taxable products

As stated above, both the base and supplemental rates apply to most taxable refined petroleum products and to alcohol fuels. The term "taxable refined petroleum product" includes aviation gasoline, motor gasoline (including blending components of gasoline other than ethanol or methanol), kerosene-type jet fuel, naphtha-type jet fuel, distillate fuel oil, kerosene, residual fuel oil, petroleum coke, butane, propane, ethanol, methanol, (and their ether derivatives). The Treasury Department is authorized to add or delete refined petroleum products to or from this list.

The statutory Btu factors for taxable refined petroleum products are stated in terms of equivalence to a barrel of oil. A barrel contains 42 gallons. The committee intends that, in the case of petroleum products subject to tax on removal from a refinery, a temperature ****965*734** adjustment must be made to adjust the measurement to a 60 degrees Fahrenheit equivalent. In the case of non-liquid products, such as petroleum coke, the Treasury Department is to develop a standard equivalent to a barrel of oil.

Mixtures containing taxable refined petroleum products are taxed based upon the weighted average of the applicable Btu factors for each taxable component included in the mixture. Thus, heating oil consisting of a fifty-fifty blend of distillate fuel oil #2 and kerosene would be taxed at 5.761 Btu.[99] To ensure that any appropriate exemptions are realized, if any non-taxable substances (e.g., biodiesel) are included in a mixture, the applicable Btu factor for such substances is zero. However, if any liquefied petroleum gases not subject to the supplemental rate are blended into gasoline (or another refined petroleum product subject to the base and supplemental rates), the entire blended product is subject to the supplemental rate as well as the base rate.

Points of collection

The petroleum tax generally is imposed at the same collection points as the highway gasoline tax is imposed under present law. Thus, the majority of this tax will be collected only once, on removal of a taxable product from a terminal (i.e., at the "terminal rack"). In some cases, however, the tax will be imposed prior to removal of the product from a terminal rack. The product will be taxed upon removal from a refinery or upon importation into the United States if the product is not transferred in bulk to a registered refinery or to a registered terminal. In addition, the product will be taxed before removal from a terminal if it was previously removed (from either a refinery or another terminal without tax) and is subsequently acquired by a person that is not registered with the Treasury Department. If a product has been taxed prior to removal from a registered terminal, tax is nevertheless again imposed on subsequent removal from a registered terminal. In that case, the additional tax on removal from the terminal is refundable if the person who paid the additional tax establishes to the satisfaction of the Treasury Department that prior tax has been paid.

For purposes of this section, the term "refinery" includes oil refineries, natural gas processing and fractionation plants where taxable products are produced, and alcohol fuel production facilities. A terminal may include registered bulk distribution facilities for any taxable refined petroleum product.

Liability for and remittance of tax

The person liable for the tax is to be determined in accordance with the rules used in determining liability under the current highway gasoline excise tax rules. Consistent with these rules, the committee intends that the person liable for the Btu tax on

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a refined petroleum product that is removed from a terminal rack generally will be the "position holder." A position holder is defined as the person that holds the inventory position with respect to the product as reflected on the records of the terminal operator (i.e., the person who has a contract with the terminal operator for the use of storage ****966*735** facilities and terminaling services at a terminal). The terminal operator is jointly and severally liable for the tax if the position holder is not registered with the Treasury Department. The terminal operator also is jointly and severally liable for any unpaid tax if the terminal operator fails to make any reports on the removal of petroleum products that are required by the Treasury Department.

If a petroleum product is taxed upon removal from a refinery or upon importation into the United States (e.g., if the product is not transferred in bulk to a registered refinery or to a registered terminal), the refiner or importer generally is liable for the tax. Similarly, the refiner is liable if product is removed from a refinery by a person who is not registered with the Treasury Department.

Use tax

A use tax applies to any use of a petroleum product as a fuel if no prior tax has been imposed and none of the exemptions from tax (described below) apply. In such cases, the user of the product is liable for and remits the tax. The use tax is discussed more fully below.

Exemptions

As under the current highway gasoline tax, petroleum products that are used for an exempt use or a partially exempt use (i.e., on-farm gasoline exempt from the supplemental rate) generally are taxed on removal from a registered terminal, with credits or refunds being provided to the exempt user. There are certain refined petroleum products that, if destined for an exempt or partially exempt use (e.g., feedstocks), will not be taxed on removal from the terminal or refinery.

In addition, heating oil to be used for space heating of buildings and diesel fuel to be used on a farm for farming purposes[100] may be removed without payment of the supplemental rate, if these products are indelibly dyed in accordance with regulations to be prescribed under the bill by the Treasury Department. These regulations may require that dyed products also contain markers for more specific identification of the applicable exemption from tax. The committee expects these regulations to be coordinated with the regulations to be prescribed for the purpose of dyeing diesel fuel that is exempt from the highway excise tax.

The registrations that are required, the records that are to be kept, and the reports that are to be made are expected to be similar for purposes of the Btu energy and highway excise taxes. In addition, if the regulatory requirements are not met, the liability for any unpaid tax and for any penalties is also intended to be similar for these two taxes. (The regulatory requirements for the dyeing of diesel fuel (under the current diesel motor fuel excise tax) are described in item II.D.2., below.)

****967*736** Natural gas

Point of collection

Natural gas generally is taxed upon removal from a pipeline to an end user (i.e., at the retail level). The term "pipeline" includes a local distribution system (commonly referred to as a local distribution company or LDC) and, to the extent provided in regulations, gathering lines or field transmission systems. The committee intends that the term "pipeline" be interpreted to include interstate pipelines, intrastate pipelines, Hinshaw pipelines, and LDC pipelines.

Natural gas removed by an LDC from another pipeline generally is not taxed until the gas is delivered to an ultimate user. This rule applies both in cases where the LDC is removing natural gas for resale to its customers as well as circumstances where an LDC is merely transporting natural gas owned by another person for use by another person. Natural gas removed from a non-LDC pipeline directly by an end user is taxed at the time of removal from the pipeline.

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Transfers of natural gas from one pipeline to another pipeline for further transmission are not subject to tax if both pipeline operators are registered with the Treasury Department. Similarly, in circumstances where natural gas is removed from a pipeline, placed in bulk storage, and later re-entered into a pipeline for further transmission, no tax is imposed on such transfers if both the pipeline and storage facility are registered with the Treasury Department.

In the case of natural gas entered into an unregistered pipeline prior to a taxable removal from a pipeline, tax is imposed at the time of the transfer to the unregistered pipeline. Notwithstanding this tax, a second tax is imposed when the natural gas is removed from the pipeline for use by an end user. In such cases, a refund will be permitted if the end user can prove that a prior tax was imposed. (Based on highway gasoline excise tax experience, the committee anticipates that transfers of natural gas to unregistered pipelines will be infrequent.)

Liability for and remittance of tax

The end user of natural gas is liable for the tax.

In the case of natural gas removed from an LDC by an end user, the LDC collects the tax and is secondarily liable for the tax to the extent that the user does not pay the tax to the LDC.[101] These rules apply regardless of whether the LDC is acting in the capacity of a seller or merely as a transporter. Secondary liability does not apply, however, in the case of users whose natural gas purchases from, and/or deliveries through, an individual LDC in the twelve-month period preceding the month when delivery occurs had a value in excess of $3.5 million.[102] For purposes of determining whether this threshold is met, the term "value" is to be determined ****968*737** in accordance with treasury regulations; the term does not include state and local taxes and the Federal Btu tax.

For natural gas removed directly from a non-LDC pipeline by an end user, the pipeline operator collects the tax from the user (but is not secondarily liable for the tax).

In cases where the secondary liability requirement does not apply (i.e., where an LDC or other pipeline acts only as a collector of tax), the pipeline operator is not liable for the tax, and is not subject to any of the Code's general penalties for non-payment of tax or failure to withhold, if certain conditions are met. First, the pipeline operator or LDC must exercise due diligence in attempting to collect the tax no later than 30 days after the taxable event. If payment is not received by that time, the pipeline operator or LDC must notify the Treasury Department of the non-payment of tax within 15 days after the close of the month during which the 30-day period expires.

Use tax

A use tax applies to any use of natural gas as a fuel if no prior tax has been imposed and none of the exemptions from tax (described below) apply. In such cases, the user of the natural gas is liable for and remits the tax.

Exemptions

Natural gas removed from a pipeline for the following uses is not subject to tax if the recipient is registered with the Treasury Department: (1) use in the generation of electricity; (2) use as a feedstock; or, (3) use in enhanced heavy oil recovery. In addition, a person who recovers methane from biomass or coal mining operations is permitted a refund if such methane is entered into a pipeline, or an exemption from the use tax if such methane is consumed before entry to a pipeline. Natural gas used on the premises where produced is exempt from tax without the need for registration. These exemptions are described in further detail below.

Coal

Point of collection

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Coal, other than coal used by a registered person for the generation of electricity, generally is taxed upon receipt[103] at any facility (including a residential facility) in the United States for use as a fuel. The committee understands that the amount of coal used for purposes other than electric generation is relatively small; therefore, this tax will be of limited application.

All types of coal (including lignite, anthracite, bituminous, sub-bituminous, and waste coal) are subject to tax. The committee understands that under current industry practices, the Btu content of coal generally is measured on receipt at an industrial customer facility.[104]****969*738** Tax is imposed based upon the measured amount of Btu's of coal received at the facility.

Liability for and remittance of tax

The operator of a facility receiving coal generally is liable for the tax. In the case of coal received at a residential facility, however, the ultimate vendor is liable for the tax. The term "residential facility" means any building which includes one or more dwelling units used for residential purposes other than on a transient basis.

The ultimate vendor of coal to a small (nonresidential) facility similarly is liable for the tax. A "small facility" is defined as one which received fewer than 1,000 tons of coal during the preceding calendar year. If the operator of such a facility submits to its coal vendor a certificate stating that the facility received fewer than 1,000 tons of coal during the preceding calendar year, the vendor is liable for the tax (rather than the operator of the facility). The owner or operator of a facility which does not so certify, however, is liable for the tax imposed.

Exemptions

Coal received at a facility for an exempt use is not subject to tax if the recipient is registered with the Treasury Department. Exemptions are described in more detail below.

Electricity

Points of collection

All electricity used in the United States is taxed at the retail level (i.e., upon sale to an end user).

Liability for and remittance of tax

The end user is liable for the tax. The person selling electricity to the end user (generally, a utility), collects the tax and generally is secondarily liable for the tax to the extent that the user fails to pay it.[105] The secondary liability requirement does not apply to sellers in the case of customers whose electricity purchases from the same seller during the twelve months preceding the month when the sale occurs exceed $3.5 million.[106] For purposes of determining whether this threshold has been met, State and local taxes and the Federal Btu tax paid on electricity purchases are not included.

Computation of tax

The tax rate is determined by each seller based upon the energy sources used by that seller to generate electricity. Tax rates are computed separately for each electric generation facility on a monthly basis using a "look back" method. No later than the last day of each month, the operator of every generation facility must ****970*739** calculate a tax rate per kilowatt hour based upon the electricity inputs used in the preceding month. The resulting tax rate per kilowatt hour is applied to all electricity sold by the facility in the succeeding month (i.e., the tax rates applied in May will be based on the electricity inputs used by the seller in March).

The committee intends that the applicable monthly Btu rate for any customer will be the rate in effect for the month in which the bill is rendered, provided that the period covered by the bill does not exceed 31 days. For bills covering electricity sold

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during a longer period, applicable monthly Btu rates must be prorated based on monthly (i.e., maximum 31-day) periods, unless the Treasury Department provides otherwise by regulation.

For electricity generated with fossil fuels, the computation of the tax rate generally is as follows. Each month, the operator of the generating facility reviews the amount of fossil fuel inputs used in the preceding month, and calculates the amount of Btu tax which would have been paid on those inputs if their use had been a taxable event, applying the applicable tax rate for the month in which the tax actually will be imposed. (This amount is referred to as the "deemed Btu tax.") The resulting amount of deemed Btu tax is then divided by the total number of kilowatt hours produced by the facility in the month to determine a tax rate per kilowatt hour. That rate is then applied to all electricity sold by the facility in the subsequent month.

For electricity generated from hydropower or nuclear power, a statutory efficiency rate presumes that 10,335 Btu's of energy are utilized to produce each kilowatt hour of electricity. The base rate of tax per million Btu's (for the month in which the tax actually will be imposed) is applied to this statutory efficiency rate to determine a rate per kilowatt hour. That rate is then applied to all electricity sold by that facility in the subsequent month.[107]

Electricity generated from pumped storage is deemed to have the deemed Btu tax of the fuels (or hydropower or nuclear power) used in generating the electricity associated with the pumped storage operation.

For persons selling electricity generated from more than one source, a weighted average tax rate per kilowatt hour for the person's entire electric system must be calculated based upon the tax rate per kilowatt hour calculated for each source using the procedures described above.

As described more fully below under exemptions, electricity generated from a qualified renewable source is not subject to tax. An electricity seller receiving electricity generated using renewable sources must include the number of kilowatt hours produced from renewable sources in calculating the weighted average tax rate for its system as described above. To ensure realization of the benefit of the exemption, the deemed Btu tax on the generation of electricity from renewable sources is zero.

For purposes of this provision, the term "renewable sources" is defined as solar, wind, or geothermal energy, biomass, municipal solid waste, and tires. The term "biomass" includes wood waste, ****971*740** sugar cane waste, and, to the extent provided in regulations, any other material that is derived from living matter and used as a fuel. The term "biomass" does not include otherwise taxable products.

Concerns regarding the impact of the Btu tax on the recycling industry have been raised with the committee. In accordance with the environmental objectives of the energy tax, the committee does not intend to disadvantage the recycling of, e.g., paper relative to the manufacture of virgin paper. The committee is concerned that the biomass exemption may create an incentive to use paper as a fuel source instead of as a raw material for recycling. The committee intends that the Treasury Department will evaluate the impact on recyclers resulting from the exemption of paper-derived fuel. If a serious disruption of supply to paper recyclers is discovered, the Treasury Department is to report that fact to the committee.

Purchased and imported electricity

If electricity is supplied to someone other than an end user (e.g., sales from one utility to another or from an independent power producer to a utility), each supplier must certify to the recipient the supplier's applicable weighted average rate per kilowatt hour supplied, as calculated above. The recipient then utilizes that rate to calculate its own weighted average rate based upon all of its electricity inputs.

Imported electricity is presumed to have been generated with hydropower and will be taxed at that rate unless the importer proves to the satisfaction of the Treasury Department that the electricity in fact was generated from another energy source.

In the case of electricity pooling arrangements (where electricity generated from many sources is entered into a common pool, and from there is supplied to many other persons), a monthly weighted average rate must be calculated for the pool based upon the weighted average rates calculated by each person supplying electricity into the pool. The weighted average rate calculated for the pool must then be supplied to all persons receiving electricity from the pool. All electricity removed

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from the pool in a given month will have the same computed weighted average tax rate applied to it.

A seller who fails to certify accurately the weighted average rate in any case where it is required is liable for a penalty tax. The penalty tax so imposed is in addition to the Btu tax imposed on the sale of such electricity to an end user. The tax is equal to the tax that would be imposed on such electricity under the above-described computation method using the petroleum rate of $0.610 per million Btu's and an assumed efficiency of 10,335 Btu's per kilowatt hour generated. The purchaser of such electricity is required to use the same rate in calculating its deemed Btu tax.

Use tax

The bill also imposes for a use tax on any electricity used in the United States if no prior tax has been imposed. The committee understands that this use tax will apply primarily in the context of facilities which generate electricity for consumption without sale. For example, the use tax is expected to apply to electricity generated at a refinery or other industrial facility for use in the facility. ****972*741** The bill authorizes the Treasury Department to exempt de minimis self-generators of electricity from the use tax.

Registration requirements

The bill includes broad regulatory authority for the Treasury Department to require all persons owning, transporting, or otherwise controlling any taxable energy source before payment of tax to register as a condition of receiving the energy source without payment of tax. These persons may include, inter alia, all petroleum refinery, pipeline, and terminal operators; natural gas pipeline operators and LDCs; shippers and owners of petroleum products held in pipelines and terminals and other storage facilities; electric utilities and non-utility generators of electricity; and vendors of coal.

The committee further understands that all persons purchasing otherwise taxable products for an exempt use (e.g., for a feedstock use) may be required to register with the Treasury Department and certify to the Treasury the basis and extent of the exemption claimed. As described more fully below, sales without payment of tax are to be limited to persons receiving the product destined for exempt use directly at the point at which tax otherwise would be collected. For example, the committee does not intend that petroleum products may be removed from any registered terminal without payment of tax for subsequent transfer to a third party for exempt use.[108]

In implementing this registration authority, the committee intends that the Treasury Department will adopt standards similar to those currently in effect under the highway gasoline excise tax, whereby registered parties must, among other things, establish the existence of a business operation and provide proof of financial responsibility and payment of other applicable Federal taxes.

Use tax

As stated under the descriptions of the various taxes and exemptions, unless specifically provided otherwise, a use tax is imposed on any use of taxable products (including crude oil) as a fuel or in the manufacture or production of any fuel in the United States, if no prior tax was imposed on such fuel. The use tax applies, for example, to natural gas consumed (including pipeline loss) in a pipeline (including distribution pipelines). The user of the fuel is liable for the tax.

The use tax generally will apply to the fuel use of products that have not reached the point at which tax normally is imposed, or to non-exempt uses of products purchased under a claim of exemption. The committee is aware, however, that certain manufacturers burn waste products, such as industrial solvents and certain used petroleum products. The use tax is not intended to apply to any previously-taxed product that is so burned. Any used product which would have been taxed under the bill if it had been burned as a fuel when new, however, will be taxed under the use tax if the used product is burned as a fuel and no prior tax has been paid on its use (because it originally was sold without payment of tax pursuant ****973*742** to a claim of exemption, such as the petrochemical feedstock exemption).

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Exemptions

In general

Sales of otherwise taxable products may be made without payment of tax for the following uses, provided that the purchaser has registered with the Treasury Department under the registration procedures described above. An unregistered person using taxable products for the following uses must pay tax on purchases of all taxable products, but is permitted a refund to the extent that the product is used in an exempt use.[109]

Exports

All exports of taxable energy sources are exempt from the Btu energy tax. Products exported directly from the point of collection for the applicable product's tax may be exported without payment of tax. In other cases, this exemption is accomplished by means of a refund following payment of tax.

Feedstock (i.e., nonfuel) use

Fossil fuels.–A feedstock exemption is provided for use of otherwise taxable refined petroleum products, natural gas, and coal used as a raw material in the production or manufacture of a nonfuel good. This feedstock exemption reflects the fact that the chemical composition of the final product incorporates the hydrocarbons contained in the fossil fuel inputs. The exemption is limited to the Btu content of any such fossil fuel product attributable to hydrocarbon molecules which become molecules of the manufactured product.

In the case of production processes giving rise to heat or other byproducts (e.g., gases), whether used or dissipated, the portion of inputs attributable to such heat or other byproducts does not qualify for the feedstock exemption. The feedstock exemption is limited to the fraction of the total input Btu's that are incorporated into the manufactured good (i.e., it is determined net of input Btu's attributable to the byproducts or heat generated).

The feedstock exemption is to be administered through transfers without payment of tax or refunds of previously paid tax. Persons receiving otherwise taxable products directly from the point at which tax otherwise would be paid, may, if registered with the Treasury Department, receive products for feedstock use without payment of tax. For example, a registered petrochemical plant receiving natural gas directly from a transmission pipeline would pay tax upon the removal of the gas from the pipeline only to the extent of its nonfeedstock use.[110] On the other hand, if a plastics manufacturer purchased petrochemical products for feedstock use from a wholesale distributor (after the terminal rack), the manufacturer must apply for a refund of tax previously paid by the wholesale distributor on removal of the product from the terminal.

****974*743** Electricity.–In certain cases, electricity may be utilized as a feedstock in a manner similar to fossil fuels. The bill includes an exemption parallel to the fossil fuel exemption for this feedstock use. This exemption applies where electrolytic processes utilize electricity to provide a flow of electrons which bond with certain ions in the production process. The exemption is limited to electricity which acts as an electron donor. As with fossil fuels, to the extent the electricity is used as a source of heat, as a source of energy used in a chemical reaction, or is lost due to inefficiencies in conductors or other sources, no exemption is allowed.

The committee understands that electrolytic processes are utilized in the production of aluminum, chlor-alkali products, copper, magnesium, sodium, zinc, and other products. The committee is aware that certain products are produced using both electrolytic and other processes. The exemption applies only to electricity used in the electrolytic production process.

For electricity used in electrolytic production processes, the feedstock exemption is intended to reflect only the electrical energy embedded in the final product. For example, in the case of aluminum smelting, the committee understands that approximately 50 percent of the direct current electricity provided as an input to the electrolytic cell is retained as potential energy in the final product (aluminum) which has a greater potential energy than the raw material (aluminum oxide). The remaining energy from the direct current electricity is lost through inefficiencies in conducting the current into the

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electrolytic cell, through heat generated by resistance to the flow of electric current and used to keep the electrolytic cell temperature at a level sufficient to facilitate the production process, through energy used to split molecules of the raw materials into component atoms, and through energy used to bind carbon and oxygen atoms into carbon dioxide molecules.

The committee expects that Treasury Department regulations will define the scope of the electricity feedstock exemption for products produced in other electrolytic processes in a manner analogous to that described for aluminum (with percentage exemptions determined by the energy embedded in the final product under the predominant electrolytic production process for that product used in the United States).

As with the exemption for fossil fuel feedstocks, registered persons using electricity as a feedstock may purchase the portion of the electricity used as a feedstock without payment of tax.

Production of coke for steel

Coal used to produce coke for use in steelmaking is partially exempt from tax. In accordance with the general rules for taxing coal, all coal received at an industrial facility is taxed upon receipt. A person using coal to produce coke for ore reduction, however, is permitted a refund equal to the base rate for each million Btu's of the actual Btu content of the coke produced. The committee intends through this tax and refund structure to tax the amount of energy used in processing coal into coke.

****975*744** Production of calcined coke

Petroleum products used to produce calcined coke are partially exempt from both the base and supplemental rates of tax. Such petroleum products are taxed in accordance with the rules generally applicable to the taxation of petroleum products. A person using the products to produce calcined coke, however, is permitted a refund equal to the tax attributable to the actual Btu content of the coke produced. The committee intends through this tax and refund structure to tax the amount of energy used in processing petroleum products into calcined coke.

Heating oil

Distillate fuel oil #2 (including such oil mixed with kerosene) used for space heating of buildings is exempt from the supplemental rate on petroleum products.

This exemption is accomplished by means of transfers without payment of tax, provided that dyeing requirements imposed under the bill are satisfied. If the dyeing requirements are not satisfied, tax will be imposed upon the removal of such fuel from a terminal, and refunds will be allowed to vendors upon proof that the benefit of the exemption has accrued to the end users of the fuel.

The committee understands that certain industrial users of distillate fuel oil may use this fuel both for heating and for other process applications (e.g., fuel to power machinery). Such users may purchase dyed fuel (without payment of tax) only to the extent that the fuel will be used for heating purposes.

Farm use

The bill exempts diesel fuel and gasoline used on farms for farming purposes, as defined under section 6420, from the supplemental rate on refined petroleum products.

In the case of diesel fuel, this exemption will be accomplished by either (1) transfers without payment of tax if the dyeing requirements imposed under the bill are satisfied or (2) refunds to farmers in the case of tax-paid fuel used in a partially exempt use. The exemption for on-farm use of gasoline is accomplished by means of refunds to farmers. For both fuels, applicable energy tax refunds are aggregated with and subject to the rules that apply to the farm use exemptions from the highway diesel fuel and gasoline excise taxes.

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Fossil fuels used in the generation of electricity

Fossil fuels (i.e., coal, natural gas, and refined petroleum products) used in the generation of electricity are exempt from the energy tax, and registered generators of electricity may purchase these fuels without payment of tax. If such non-tax-paid fuels are burned to produce steam in addition to electricity, a use tax is imposed on the portion of fossil fuel inputs used to generate such steam.[111] The use tax does not apply to the fossil fuels used to produce steam which is used for any purpose for which direct fuel inputs would be exempt.

****976*745** As with many other exempt uses, fuels received by unregistered generators of electricity are taxed when the fuels pass the generally established points of collection. Refunds of tax are provided to these persons for tax paid on fuel subsequently used to generate electricity.

Fuels used in the production of taxable energy products

Four exemptions are provided for uses of otherwise taxable energy products in the production of other such products. First, an exemption from the use tax on petroleum products and natural gas is permitted for crude oil and natural gas used for producing crude oil or natural gas on the production premises. Petroleum products are treated as used on the premises if the use occurs before entry at the lease automatic custody transfer point (or its manual equivalent). Natural gas is similarly treated if it is used before entry into an interstate or intrastate transmission pipeline.

Because this exemption is limited to the use tax on petroleum products and natural gas, electricity consumed on the production premises (whether or not produced thereon) is subject to the electricity tax. Similarly, fuels purchased from off the premises (or refined off the premises and returned to the premises) and used thereon, are taxable.

Second, crude oil or other petroleum products (including refinery gas produced in the refining process) used at an oil refinery, natural gas used at a natural gas processing or fractionation plant, and ethanol used at an ethanol production facility are not subject to the use tax on petroleum products or natural gas. As with the exemption for "on premises" use, this exemption does not extend to electricity or to products acquired for use as a fuel at these plants (e.g., natural gas received at and used in a refinery).

Third, natural gas or coal used in qualified enhanced oil recovery projects for the recovery of heavy oil is exempt from the energy tax. For this purpose, enhanced oil recovery projects are projects which involve the application (in accordance with sound engineering principles) of one or more tertiary recovery methods as described in section 193(b)(3). "Heavy oil" is defined as oil having a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

Fourth, coal received at a facility, or petroleum products removed from a terminal, for use in the manufacture or production of synthetic natural gas is exempt from the energy tax. The Treasury Department is authorized to promulgate regulations to provide for the exemption of coal or refined petroleum products used in the manufacture or production of other synthetic fuels as well.

Other exemptions

International commercial transportation.–A vendor of ship fuel (both petroleum products and coal) or jet fuel sold for use or used in international commercial transportation is permitted a refund equal to the amount of the energy excise tax imposed on such fuel. For this purpose, "commercial transportation" means transportation by aircraft or vessels in the trade or business of transporting persons or property for hire. To be "international," a vessel must actually be engaged in foreign trade or trade between the United ****977*746** States and any of its possessions, or an aircraft must be transporting persons or property from a point within the United States to a point outside the United States and outside the 225-mile zone of Canada and Mexico (as defined under section 4262(c)(2)).

In the case of airline flights which make several stops within the United States before leaving for a point outside the United States, only the fuel used in the flight segment from the last point within the United States to a point outside the United States (and outside the 225-mile zone) is exempt from tax. For example, if an airline flight originates in New York, stops in Los

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Angeles, and continues on to Tokyo, the only fuel exempt from tax is the fuel used in the flight segment from Los Angeles to Tokyo.

Methane recovered from biomass or coal mining.–Methane recovered from biomass or in conjunction with room and pillar or long wall coal mining operations is exempt from tax. The committee intends that this exemption apply only to underground (as opposed to surface) mines. If such methane is entered into a transmission pipeline, the exemption is administered by granting a refund to the person entering the methane into the pipeline. The amount of the refund is equal to the amount of tax which would be imposed on the methane if the entry of methane into a pipeline were a taxable event. Upon removal from the pipeline, the methane is taxed in accordance with the general rules relating to the taxation of natural gas.

A person recovering methane from a coal mine before underground mining operations commence qualifies for the refund described above, but if mining operations do not commence within ten years after the methane is recovered, all prior refunds will be recaptured (with interest), and no additional refunds will be paid until actual underground mining commences. Refunds also are recaptured if the mine is sold before mining operations begin.

Tax on high-energy products

The bill imposes an imputed Btu tax on certain imported products that contain significant levels of direct energy inputs that would be taxable if the products were manufactured in the United States. This tax is intended to equal the tax that would be imposed on the energy inputs if the manufacturing had occurred in the United States.

The imputed Btu tax is imposed only on imported products which the Treasury Department lists as being "energy intensive." The tax is effective for all listed products that are imported after any product is listed.

The imputed Btu tax generally is limited to products manufactured by industries classified by four digit SIC codes in the most recent Commerce Department Census of Manufacturers report. Domestic manufacturers are permitted to petition the Treasury to add products to the list even if the industry in which they are manufactured is not so listed; products can be listed under this procedure only if the direct energy inputs into the product exceed two percent of the value of the product (as described below).

The tax applies only to products of industries classified, or individual products which are classified, as having direct energy inputs, measured as a percentage of the value of the finished product, ****978*747** in excess of two percent. Product value is determined exclusive of the imputed Btu tax. Additionally, for purposes of this determination, energy inputs which are not taxed under the energy tax are not included (e.g., feedstock use of otherwise taxable fuels). Only energy used directly in the manufacturing process of the product is considered. For example, energy inputs to raw materials which subsequently are consumed in the manufacturing process and general energy consumption by the manufacturer (e.g., to light or heat a factory) are excluded from the calculation.

The imputed Btu tax is imposed assuming that the imported manufactured product was produced using the predominant method used in the United States for like products, and assuming the same direct energy inputs as for such domestically produced like products.

For any imported product, importers are permitted to reduce the tax, or to demonstrate that energy used in a foreign manufacturing process does not exceed the two percent threshold, by documenting actual energy inputs in the imported product's manufacturing process.

EFFECTIVE DATE

The energy tax provisions are effective on July 1, 1994.

2. Modification of the collection of the diesel fuel excise tax (secs. 14242–14243 of the bill and secs. 4041, 4081 and 4091 of the Code)

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PRESENT LAW

Diesel fuel tax collection

Taxes totalling 20.1 cents per gallon generally are imposed on the sale of diesel fuel by a producer or importer. A reduced rate of 3.1 cents per gallon applies to sales of diesel fuel for use in certain intercity buses. A reduced rate of 2.6 cents per gallon applies to sales of diesel fuel for use in trains.

Diesel fuel may be sold without the payment of tax in the following cases: (1) sales of heating oil, (2) sales to other producers, and (3) sales for nontaxable uses including (a) use other than as fuel in a diesel-powered highway vehicle or diesel-powered train (such as use in any boat), (b) use in off-highway business use, (c) use on a farm for farming purposes, (d) exclusive use by a State or local government, (e) export, (f) exclusive use by a nonprofit educational organization, (g) use by certain aircraft museums, and (h) use in certain qualified local buses. A sale may be made without the payment of tax only if certain prescribed conditions are satisfied, which may include registration by the buyer and seller and certification of exempt use by the buyer to the seller.

The producer making a taxable sale generally is liable for the tax. The term producer generally includes refiners, compounders, blenders, wholesale distributors of diesel fuel and dealers selling any diesel fuel exclusively to producers of diesel fuel. Producers must be registered with the Internal Revenue Service ("IRS") and, as a condition of registration, may be required to post a bond. ****979*748** Thus, in general, most diesel fuel tax is collected at the wholesale distributor level.

Exempt and reduced-rate users who buy diesel fuel after tax has been paid on the fuel may file a claim for credit or refund. These users must, however, keep business records that will enable the IRS to verify the amount claimed.

Gasoline tax collection

Taxes totalling 14.1 cents a gallon generally are imposed on (1) the removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States, and (4) the sale to any unregistered person unless there was a prior taxable removal or entry of the gasoline under (1), (2), or (3) above. The tax, however, does not apply to any entry or removal of gasoline transferred in bulk to a terminal if all the persons involved (including the terminal operator) are registered. Thus, tax generally is imposed when gasoline is removed by truck from a terminal (this is called removal at the "terminal rack"). Taxpayers who use gasoline for an exempt use, such as for farming or for off-highway business use, are eligible to claim a credit or refund of the excise tax included in the price of the gasoline.

Under Treasury Department regulations, the person liable for the tax imposed on gasoline removed from a terminal rack is the "position holder," which, in general, is the person that holds the inventory position to gasoline as reflected on the records of the terminal operator (i.e., has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal). In addition, the terminal operator may be jointly and severally liable for the tax if the position holder is not registered with Treasury. Terminal operators are required to be registered and, as a condition of registration, may be required to post a bond in such sum as the Treasury determines.

REASONS FOR CHANGE

Recent reports have suggested that there may be substantial levels of diesel fuel tax evasion. In particular, at a hearing in 1992 on shortfalls in Highway Trust Fund collections, the Department of Transportation estimated that the level of diesel fuel tax evasion is between 15 and 25 percent of total gallons consumed.[112] Advancing the collection point of the diesel fuel taxes reduces the number of times the fuel changes ownership prior to tax, and reduces the number of taxpayers. As a result, the diesel fuel taxes should be easier to collect and payments of tax should be easier to monitor.

In addition, the committee intends to minimize the additional burden that may be imposed on exempt users of diesel fuel as a result of the collection point change. Thus, the committee intends that the collection point change be accomplished in a manner that would preserve the present exemptions from the diesel fuel tax and the ability to buy diesel fuel (including

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heating oil) without payment of tax. The committee also intends to coordinate collection of ****980*749** the highway diesel tax with collection of the Btu tax and so is providing a similar collection point.

EXPLANATION OF PROVISIONS

Point of collection

The bill provides that the full 20.1 cents per gallon diesel fuel excise tax rate will be collected on removal from a terminal (i.e., at the terminal rack) under generally the same rules as the gasoline tax currently is collected. Thus, tax generally will be imposed when diesel fuel is removed by truck from a registered terminal. However, unlike the gasoline tax, removal of diesel fuel that is destined for an exempt use will not be taxed as the fuel is removed from the terminal if the dyeing requirements described below are satisfied.

Thus, for example, removal of diesel fuel that is destined for use as heating oil or for off-highway farming purposes will not be taxed as the fuel is removed from the terminal. In addition, removal of diesel fuel that is destined for use by certain intercity buses and by trains will not be taxed as the fuel is removed from the terminal. The special tax rates of 3.1 cents per gallon for diesel fuel used by intercity buses and of 2.6 cents per gallon for diesel fuel used by trains (other than certain State and local governmentally owned and operated trains) will continue to be imposed on the sale of the fuels at the time that the fuel is sold to these reduced-rate users.

In order to permit diesel fuel to be removed from a terminal without payment of tax, the bill requires the fuel to be indelibly dyed in accordance with regulations to be prescribed by the Treasury Department. These regulations are to prescribe the type and color of the required dyes to be added to the fuel. The regulations also may permit the use of markers to supplement the dyeing of fuels, where the use of markers would be necessary to protect revenues.

The committee expects the Treasury Department to coordinate the dyeing of fuel for purposes of the highway diesel tax and the new Btu tax. The committee further expects the Treasury Department to coordinate the dyeing that will be required for purposes of the highway diesel tax with the dyeing that will be required for purposes of the Clean Air Act.

Specifically, the committee understands that, initially, the dyeing requirements will be applied as follows. Qualified heating oil and diesel fuel used in farming, (exempt from both the Btu energy tax and highway diesel fuel tax) will be dyed the color prescribed under the Clean Air Act for high sulphur diesel fuel (whether or not dyed under the Clean Air Act). For diesel fuel exempt only from the highway diesel tax that is required to be dyed under the Clean Air Act, supplemental markers will be required. Finally, for other diesel fuel (i.e., low sulphur diesel fuel) will be exempt only from the highway diesel tax, a different color dye is required.

The Treasury Department is expected to enforce the dyeing requirement vigorously and to check regularly to ensure that terminal operators maintain removal systems that prevent undyed fuel from being removed without payment of tax, that any fuel that is ****981*750** removed without payment of tax is dyed, and that dyes are maintained in a secure location.

As under present law, an exempt or reduced-rate user that uses tax-paid undyed diesel fuel is permitted a refund if the user establishes that a prior tax was paid with respect to the fuel and that the fuel has been used for an exempt or reduced-rate use. Thus, for example, an intercity bus company that qualified for the 3.1 cents per gallon reduced rate could apply for a refund of 17 cents per gallon if it could show it purchased undyed fuel (which had been subject to the full 20.1-cents-per-gallon tax) rather than dyed fuel.

Administrative provisions

As under present law, the Treasury Department is permitted to require appropriate registration of persons necessary to implement the diesel fuel tax, including diesel fuel producers and dye manufacturers. The Treasury Department also is authorized to require position holders, terminal operators, and other appropriate persons to keep records and to report the quantity of dyed and undyed fuel that is removed from a terminal or refinery.

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As under the present law gasoline tax rules, the Treasury Department is permitted to prescribe rules and administrative procedures for determining the liability for payment of tax. These regulations are expected to provide that a terminal operator will be jointly and severally liable for any unpaid tax if a position holder is not registered with the IRS. In addition, the terminal operator may be held jointly and severally liable for any unpaid tax if the terminal operator failed to keep any required records or to make any required reports on the removal of dyed and undyed diesel fuel.

In addition, the Treasury Department is authorized to impose a new penalty on any person who sold dyed fuel to a person whom it knew or had reason to know would use the fuel for a taxable use, or any person who knew or had reason to know that it used dyed fuel for a taxable use. This new penalty is the greater of $1,000 or twice the otherwise applicable tax on the diesel fuel so used.

EFFECTIVE DATE

The provision applies to diesel fuel removed from terminals after March 30, 1994. A floor stocks tax is imposed on diesel fuel held for sale or in bulk quantities for business use on April 1, 1994; the tax applies only to diesel fuel held beyond the terminal rack on April 1, 1994, and the amount of tax is reduced by any tax previously imposed on the fuel under section 4041 or 4091. The Treasury Department further is authorized to require dyeing of bulk quantities of diesel fuel held beyond the terminal rack for nontaxable uses on that date.

****982*751** 3. Extend the current 2.5-cents-per-gallon motor fuels excise tax rate; Transfer revenues to the Highway Trust Fund (sec. 14244 of the bill and secs. 4041, 4081, and 4091 of the Code)

PRESENT LAW

The Federal motor fuels excise taxes generally are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, gasoline and special motor fuels used in motorboats, and diesel fuel used in trains. Off-highway business uses generally are exempt from motor fuels taxes, as are sales for export, for the exclusive use of State and local governments and nonprofit educational organizations, and for farming uses.

The rate of tax on motor fuels is 14.1 cents per gallon on gasoline and special motor fuels and 20.1 cents per gallon on diesel fuel; this rate includes a “deficit reduction rate” (General Fund rate) of 2.5 cents per gallon and a Leaking Underground Storage Tank (LUST) rate of 0.1 cent per gallon. Diesel used in trains is subject only to the 2.5-cents deficit reduction rate and to the 0.1-cents LUST rate (not to the full 20.1 cents per gallon rate). The deficit reduction rate does not apply after September 30, 1995. Revenues from the deficit reduction rate are retained in the General Fund, while the balance of the highway motor fuels tax revenues are transferred to the Highway Trust Fund through September 30, 1999. Revenues from the 0.1-cent-per-gallon LUST tax rate are transferred to the LUST Trust Fund through December 31, 1995.

REASONS FOR CHANGE

The committee believes that extending the 2.5-cents-per-gallon motor fuels tax rate, and dedicating the receipts to the Highway Trust Fund, will provide additional resources to meet the country’s infrastructure needs. Retaining certain of the revenues from the 2.5-cents-per-gallon motor fuels tax in the General Fund will contribute to deficit reduction.

EXPLANATION OF PROVISION

The bill extends the additional 2.5-cents-per-gallon motor fuels tax rate from October 1, 1995, through September 30, 1999. The revenues from this rate generally are to be transferred into the Highway Trust Fund, with revenues equivalent to 2 cents per gallon credited to the Highway Account and 0.5 cent per gallon to the Mass Transit Account. However, revenues from the 2.5-cents-per-gallon tax on diesel used in trains are to be retained in the General Fund as are revenues from 2.5 cents per gallon of the tax on motorboat, small-engine, and nonhighway recreational fuels. The provision retains present-law motor

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fuels tax exemptions.

EFFECTIVE DATE

The extension of the 2.5-cents-per-gallon rate applies after September 30, 1995.

****983*752** 4. Increase inland waterways fuel tax (sec. 14413 of the bill and sec. 4042 of the Code)

PRESENT LAW

A Federal inland waterway fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on specified inland or intracoastal waterways of the United States (sec. 4042). Receipts from these taxes are transferred to the Inland Waterways Trust Fund (sec. 9506).

The tax rate on these fuels is 17 cents per gallon for 1993, 19 cents per gallon for 1994, and 20 cents per gallon for 1995 and thereafter. In addition, there is a 0.1-cent-per-gallon tax on such fuels for the Leaking Underground Storage Tank Trust Fund through December 31, 1995 (sec. 9508).

REASONS FOR CHANGE

The committee believes that the costs of operation and maintenance of inland waterways are subsidized by taxpayers generally and that a greater share of these costs ought to be borne by commercial navigation beneficiaries. The Administration also has testified before the committee that barge freight enjoys a significant subsidy and that the inland waterways fuel tax should be increased as an appropriate charge on the users of the inland waterways system.

EXPLANATION OF PROVISION

The bill increases the Federal inland waterway fuel tax by 50 cents per gallon in a series of steps. Under the bill, inland waterways fuel will be taxed at a rate of 24 cents per gallon in 1994, 40 cents per gallon in 1995, 55 cents in 1996, and 70 cents per gallon in 1997 and thereafter. The bill does not change the additional 0.1-cent-per-gallon fuel tax imposed for the Leaking Underground Storage Tank Trust Fund.

EFFECTIVE DATE

The provision is effective beginning January 1, 1994.

E. COMPLIANCE PROVISIONS

1. Reporting rule for service payments to corporations (sec. 14251 of the bill and secs. 6041 and 6041A of the Code)

PRESENT LAW

A person engaged in a trade or business who makes payments during the calendar year of $600 or more to a person for services performed must file an information return with the Internal Revenue Service ("IRS") reporting the amount of such payments, as well as the name, address and taxpayer identification number of the person to whom such payments were made. A similar statement must also be furnished to the person to whom such payments were made. Treasury regulations generally provide, however, that payments to corporations (including payments for services) need not be ****984*753** reported (Treas. Reg. sec. 1.6041–3(c); Prop. Treas. Reg. sec. 1.6041A-1(d)(2)).[113]

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REASONS FOR CHANGE

IRS studies show that the level of voluntary tax compliance among smaller corporate service providers has been decreasing in recent years because of nonfiling and underreporting of income and is lower than that of most other smaller corporate businesses. In addition, payors cannot easily determine whether a business is actually conducted in corporate form (i.e., not subject to information reporting) because payees can simply claim to be incorporated, and payors are not required to verify such claims. The committee also understands that when taxpayers know that the IRS has received information reports on payments made to them, they are more likely to file tax returns and to report their income accurately. The committee therefore believes that the IRS's ability to identify nonfilers and to require backup withholding will be substantially improved by repealing the regulatory exception for corporate service providers.

EXPLANATION OF PROVISION

The bill provides that payments for services purchased in the course of the payor's trade or business will not be exempt from the information reporting requirements merely because the payments are made to a corporation. The committee understands, however, that the IRS may continue to exempt from information reporting certain types of payments and certain types of corporate payees where the risk of noncompliance is minimal.

EFFECTIVE DATE

The provision applies to payments for services made by a payor after December 31, 1993.

2. Raise standard for accuracy-related and preparer penalties (sec. 14252(a) of the bill and secs. 6662 and 6694 of the Code)

PRESENT LAW

A 20-percent penalty is imposed on any portion of an underpayment of tax that is attributable either to a substantial understatement of income tax on a return, or to negligence or disregard of rules or regulations (sec. 6662).

For this purpose, an understatement[114] is considered substantial if it exceeds the greater of 10 percent of the tax required to be shown on the year's return or $5,000 ($10,000 for corporations other than S corporations and personal holding companies). In determining whether an understatement is substantial, the amount of the understatement is reduced by any portion attributable to an ****985*754** item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the tax return (or a statement attached to the return), provided that the treatment of the disclosed item was not "frivolous" (Treas. Reg. sec. 1.6662–4). Special rules apply to tax shelters.

The term "negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws, a failure to exercise ordinary and reasonable care in the preparation of a tax return, and a failure to keep adequate books and records or to substantiate items properly (Treas. Reg. sec. 1.6662–3(b)(1)). The term "disregard" includes any careless, reckless, or intentional disregard of rules or regulations (sec. 6662(c)). The penalty for negligence or disregard of rules or regulations does not apply where the position taken is adequately disclosed, the position is not "frivolous", and the taxpayer has adequate books and records and has substantiated items properly (Treas. Reg. sec. 1.6662–3(c)).[115]

A $250 penalty with respect to a return or claim for refund of income tax may be imposed on the preparer if any understatement of tax liability on the return or claim for refund resulted from a position that did not have a realistic possibility of being sustained on its merits and the preparer knew or reasonably should have known of the position (sec. 6694(a)). The penalty is $1,000 per return or claim for refund if the understatement is due to any reckless or intentional disregard of rules or regulations (sec. 6694(b)). These penalties may be avoided where the position taken on the return or claim for refund is adequately disclosed and is not "frivolous" (Treas. Reg. secs. 1.6694–2(c), 1.6694–3(c)(2)).[116]

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A "frivolous" position with respect to an item for purposes of all of these penalty provisions is one that is "patently improper" (Treas. Reg. sec. 1.6662–3(b)(3), 1.6662–4(e)(2)(i), 1.6694–2(c)(2), 1.6694–3(c)(2)).

REASONS FOR CHANGE

The committee believes that the "frivolous" standard does not sufficiently discourage taxpayers and preparers from taking unreasonable return positions. Accordingly, to encourage compliance, the committee believes that a tougher standard should be imposed.

EXPLANATION OF PROVISION

Under the bill, the "reasonable basis" standard replaces the "not frivolous" standard for purposes of the accuracy-related and income tax return preparer penalties. The committee intends that "reasonable basis" be a relatively high standard of tax reporting, that is, significantly higher than "not patently improper." This standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim.

Under the bill, a taxpayer can avoid a substantial understatement penalty by adequately disclosing a return position only if the ****986*755** position has at least a reasonable basis. Similarly, a taxpayer can avoid the penalty that applies to disregarding rules or regulations by adequately disclosing a return position only if the position has at least a reasonable basis. The disclosure exception is no longer relevant with respect to the penalty for negligence, because a taxpayer generally is not considered to have been negligent with respect to a return position, regardless of whether it was disclosed, if the position has a reasonable basis. Also, a preparer can avoid a penalty by adequately disclosing a return position only if the position has at least a reasonable basis.

The bill also eliminates the reasonable cause and good faith exception for fraud, because fraud is inconsistent with reasonable cause and good faith.

EFFECTIVE DATE

The provision applies to tax returns due (without regard to extensions) after December 31, 1993.

3. Modify tax shelter rules for purposes of the substantial understatement penalty (sec. 14252(b) of the bill and sec. 6662(d) of the Code)

PRESENT LAW

Under present law, a 20-percent penalty applies to any portion of an underpayment of income tax required to be shown on a return that is attributable to a substantial understatement of income tax (sec. 6662). For this purpose, an understatement is considered substantial if it exceeds the greater of (1) 10 percent of the tax required to be shown on the return, or (2) $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). The amount of an understatement of income tax is the excess of the tax required to be shown on the return, over the tax imposed which is shown on the return (reduced by any rebates of tax).

In determining whether an understatement is substantial, the understatement generally is reduced by the portion of the understatement that is attributable to an item for which there was substantial authority or adequate disclosure (sec. 6662(d)(2)). However, in the case of tax shelter items, the understatement is reduced only by the portion of the understatement that is attributable to an item both for which there was substantial authority and with respect to which the taxpayer reasonably believed that the claimed treatment of the item was more likely than not the proper treatment (sec. 6662(d)(2)(C)(i)). Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

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A "tax shelter" is any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if the principal purpose of such partnership, entity, plan or arrangement is to avoid or to evade Federal income tax (sec. 6662(d)(2)(C)(ii)). An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of the tax shelter (Treas. Reg. sec. 1.6662–4(g)(3)).

****987*756** REASONS FOR CHANGE

The committee understands that the substantial understatement penalty may not effectively deter certain abusive tax shelter transactions that are structured with little anticipated profit apart from the expected tax benefits. Taxpayers can assert that these types of tax shelter transactions have "economic substance" because of the existence of some profit potential and some economic risk. As a result, they may be able to avoid the substantial understatement penalty by arguing that they reasonably believed the tax treatment of the tax shelter items was more likely than not the proper treatment. Accordingly, the committee believes that the requirements under sec. 6662 for reducing the amount of an understatement in the case of tax shelter items should be tightened.

EXPLANATION OF PROVISION

Under the bill, an understatement is reduced by the portion of the understatement attributable to a tax shelter item only if, in addition to satisfying existing requirements, the taxpayer can demonstrate that the reasonably anticipated after-tax benefits from the taxpayer's investment in the shelter do not significantly exceed the reasonably anticipated net pre-tax economic profit from such investment. Thus, an understatement is reduced by the portion of the understatement attributable to a tax shelter item only if (1) there was substantial authority for the treatment of the item claimed on the return, (2) the taxpayer reasonably believed that the claimed treatment was more likely than not the proper treatment, and (3) the reasonably anticipated after-tax benefits from the taxpayer's investment in the shelter do not significantly exceed the reasonably anticipated net pre-tax economic profit from such investment. The bill does not alter the definition of "tax shelter" for purposes of the substantial understatement penalty and, therefore, applies only to investments in arrangements that are considered tax shelters without regard to this bill.

In general, the comparison of the reasonably anticipated net pre-tax economic profit to the reasonably anticipated after-tax benefits shall be made by comparing the net present values of the respective items. This comparison shall be made based upon a reasonable financial projection, prepared generally at or about the time of a taxpayer's investment in the shelter,[117] that takes into account all items (e.g., items relating to partnership transactions, investor transactions, corporate formations and distributions, dispositions of residuals) reasonably expected to be attributable to the taxpayer's investment in the shelter.[118] In order to be "reasonable", a financial projection must be based on reasonable economic and business assumptions, reflect circumstances that are reasonably likely to occur, and be made in good faith.

****988*757** Under the net present value approach, the reasonably anticipated net pre-tax economic profit from a taxpayer's investment in a shelter generally is the taxpayer's share of the discounted cash inflows and outflows attributable to the shelter that are reasonably anticipated over the expected life of the taxpayer's investment in the shelter, exclusive of federal income tax effects. Cash inflows and outflows generally include income, operating expenses, debt service, disposition of residuals, satisfaction of loans, and equity investments.

The reasonably anticipated after-tax benefits from a taxpayer's investment in a shelter are computed by adding the discounted tax inflows and outflows reasonably anticipated from the investment to the taxpayer's share of the discounted cash inflows and outflows attributable to the shelter. For purposes of determining tax inflows and outflows, the taxpayer shall use the Federal income tax rate reasonably anticipated to be applicable to him or her for the applicable year(s).

The present values of the reasonably anticipated after-tax benefits and the reasonably anticipated net pre-tax economic profit are computed by using a reasonable discount rate. A reasonable discount rate is the taxpayer's expected rate of return on investments with comparable risk.

The determination of whether the reasonably anticipated after-tax benefits significantly exceed the reasonably anticipated net pre-tax economic profit shall take into account the amount of the taxpayer's investment in the shelter.

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EFFECTIVE DATE

This provision applies to tax returns due (without regard to extensions) after December 31, 1993.

4. Information returns relating to the discharge of indebtedness by certain financial entities (sec. 14253 of the bill and sec. 6050 of the Code)

PRESENT LAW

Under section 61(a)(12), a taxpayer's gross income includes income from the discharge of indebtedness. The Code, however, does not currently require lenders to file information returns with respect to discharged debt.[119]

Pursuant to a 1984 Office of Management and Budget memorandum, Treasury Department guidelines currently require Federal agencies to report forgiven debt amounts exceeding $600 to the Internal Revenue Service (IRS) on a Form 1099–G, except where prohibited by law. The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) do not issue such reports because of concerns that information reporting may violate the Right to Financial Privacy Act of 1978 (RFPA). The RFPA permits such information reporting if the Code specifically requires it.

****989*758** REASONS FOR CHANGE

The committee believes that it is inappropriate to exempt the FDIC and the RTC from information reporting with respect to discharged indebtedness when other Federal agencies are required to report such information.[120] Moreover, to encourage taxpayer compliance with respect to discharged indebtedness, the committee believes that private financial institutions and credit unions also should be required to report discharged indebtedness. The committee understands that information reporting will enhance the ability of the IRS to enforce the discharge of indebtedness rules.

EXPLANATION OF PROVISION

The bill requires "applicable financial entities" to file information returns with the IRS regarding any discharge of indebtedness (within the meaning of sec. 61(a)(12)) of $600 or more.[121] The information return must set forth the name, address and taxpayer identification number of the person whose debt was discharged, the amount of debt discharged, and the date on which the debt was discharged.[122] The information return must be filed in the manner and at the time specified by the IRS. The same information also must be provided to the person whose debt is discharged by January 31 of the year following the discharge.

For purposes of the bill, "applicable financial entities" include: (1) the FDIC, the RTC, the National Credit Union Administration, and any successor or subunit of any of them;[123] (2) any financial institution (described in secs. 581 or 591(a)); (3) any credit union; and (4) any subsidiary of an entity described in (2) or (3) which, by virtue of being affiliated with such entity, is subject to supervision and examination by a Federal or State agency regulating such entities.

Under the bill, the penalties for failure to file correct information reports with the IRS, and to furnish statements to taxpayers, are similar to those imposed with respect to a failure to provide other information returns. For example, the penalty for failure to furnish statements to taxpayers is generally $50 per failure, subject to a maximum of $100,000 for any calendar year.[124] These penalties are not applicable if the failure is due to reasonable cause and not to willful neglect.

EFFECTIVE DATE

The provision applies to discharges of indebtedness after the date of enactment.

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**990*759 5. Use of Harbor Maintenance Trust Fund for administrative expenses (sec. 14412 of the bill and sec. 9505(c) of the Code)

PRESENT LAW

Under present law (Code sec. 9505(c)), amounts in the Harbor Maintenance Trust Fund are available, as provided by appropriation Acts, for making expenditures:

(1) under section 210(a) of the Water Resources Development Act of 1986 (Corps of Engineers costs for dredging and maintaining harbors at U.S. ports);

(2) for payments of rebates of certain St. Lawrence Seaway tolls or charges; and

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise tax (but not more than $5 million per fiscal year) for periods during which no Customs processing fee applies under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("1985 Act").

The Customs processing fee currently is in effect through September 30, 1995.[125] Thus, since the Customs processing fee is in effect under the 1985 Act, the Trust Fund is not currently permitted to be used for Treasury (Customs) expenses for administering the harbor maintenance excise tax.

REASONS FOR CHANGE

The committee believes that additional enforcement resources are necessary for the Customs Service to properly administer the harbor maintenance excise tax and to increase collection and audit efforts. This increased enforcement effort should result in the collection of additional tax revenues that are owed but are not being paid.

EXPLANATION OF PROVISION

The bill allows (subject to appropriations) up to $5 million per fiscal year from the Harbor Maintenance Trust Fund to be used by the Department of the Treasury (Customs Service) to improve compliance with the existing harbor maintenance excise tax. This is accomplished by removing the current Trust Fund restriction against such use while the Customs processing fee is in effect.

EFFECTIVE DATE

The provision applies to fiscal years beginning after the date of enactment.

**991*760 F. TREATMENT OF INTANGIBLES

1. Amortization of goodwill and certain other intangibles (sec. 14261 of the bill and new sec. 197 of the Code)

PRESENT LAW

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. Treas. Reg. sec. 1.167(a)–(3). These Treasury Regulations also state that no depreciation deductions are allowed with respect to goodwill.

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The U.S. Supreme Court recently held that a taxpayer able to prove that a particular asset can be valued, and that the asset has a limited useful life which can be ascertained with reasonable accuracy, may depreciate the value over the useful life regardless of how much the asset appears to reflect the expectancy of continued patronage. However, the Supreme Court also characterized the taxpayer's burden of proof as "substantial" and stated that it "often will prove too great to bear." Newark Morning Ledger Co. v. United States, — U.S.—, 61 U.S.L.W. 4313 at 4320, 4319 (April 20, 1993).

REASONS FOR CHANGE

The Federal income tax treatment of the costs of acquiring intangible assets is a source of considerable controversy between taxpayers and the Internal Revenue Service. Disputes arise concerning (1) whether an amortizable intangible asset exists; (2) in the case of an acquisition of a trade or business, the portion of the purchase price that is allocable to an amortizable intangible asset; and (3) the proper method and period for recovering the cost of an amortizable intangible asset. These types of disputes can be expected to continue to arise, even after the decision of the U.S. Supreme Court in Newark Morning Ledger Co. v. United States, supra.

It is believed that much of the controversy that arises under present law with respect to acquired intangible assets could be eliminated by specifying a single method and period for recovering the cost of most acquired intangible assets and by treating acquired goodwill and going concern value as amortizable intangible assets. It is also believed that there is no need at this time to change the Federal income tax treatment of self-created intangible assets, such as goodwill that is created through advertising and other similar expenditures.

Accordingly, the bill requires the cost of most acquired intangible assets, including goodwill and going concern value, to be amortized ratably over a 14-year period. It is recognized that the useful lives of certain acquired intangible assets to which the bill applies may be shorter than 14 years, while the useful lives of other acquired intangible assets to which the bill applies may be longer than 14 years.

****992*761** EXPLANATION OF PROVISION

In general

The bill allows an amortization deduction with respect to the capitalized costs of certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 14-year period that begins with the month that the intangible is acquired.[126] No other depreciation or amortization deduction is allowed with respect to a section 197 intangible that is acquired by a taxpayer.

In general, the bill applies to a section 197 intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. In addition, the bill generally applies to a section 197 intangible that is treated as acquired under section 338 of the Code. The bill generally does not apply to a section 197 intangible that is created by the taxpayer if the intangible is not created in connection with a transaction (or series of related transactions) that involves the acquisition of a trade or business or a substantial portion thereof.

Except in the case of amounts paid or incurred under certain covenants not to compete (or under certain other arrangements that have substantially the same effect as covenants not to compete) and certain amounts paid or incurred on account of the transfer of a franchise, trademark, or trade name, the bill generally does not apply to any amount that is otherwise currently deductible (i.e., not capitalized) under present law.

No inference is intended as to whether a depreciation or amortization deduction is allowed under present law with respect to any intangible property that is either included in, or excluded from, the definition of a section 197 intangible. In addition, no inference is intended as to whether an asset is to be considered tangible or intangible property for any other purpose of the Internal Revenue Code.

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Definition of section 197 intangible

In general

The term "section 197 intangible" is defined as any property that is included in any one or more of the following categories: (1) goodwill and going concern value; (2) certain specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest****993*762** in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

Certain types of property, however, are specifically excluded from the definition of the term "section 197 intangible." The term "section 197 intangible" does not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract; (3) any interest in land; (4) certain computer software; (5) certain interests in films, sound recordings, video tapes, books, or other similar property; (6) certain rights to receive tangible property or services; (7) certain interests in patents or copyrights; (8) any interest under an existing lease of tangible property; (9) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); (10) a franchise to engage in any professional sport, and any item acquired in connection with such a franchise; and (11) certain transaction costs.

In addition, the Treasury Department is authorized to issue regulations that exclude certain rights of fixed duration or amount from the definition of a section 197 intangible.

Goodwill and going concern value

For purposes of the bill, goodwill is the value of a trade or business that is attributable to the expectancy of continued customer patronage, whether due to the name of a trade or business, the reputation of a trade or business, or any other factor.

In addition, for purposes of the bill, going concern value is the additional element of value of a trade or business that attaches to property by reason of its existence as an integral part of a going concern. Going concern value includes the value that is attributable to the ability of a trade or business to continue to function and generate income without interruption notwithstanding a change in ownership. Going concern value also includes the value that is attributable to the use or availability of an acquired trade or business (for example, the net earnings that otherwise would not be received during any period were the acquired trade or business not available or operational).

Workforce, information base, know-how, customer-based intangibles, supplier-based intangibles and other similar items

Workforce.–The term "section 197 intangible" includes workforce in place (which is sometimes referred to as agency force or assembled workforce), the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a highly-skilled workforce is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring an existing employment contract (or contracts) or a relationship with employees or consultants (including but not limited to any "key employee" contract or relationship) as part of the acquisition ****994*763** of a trade or business is to be amortized over the 14-year period specified in the bill.

Information base.–The term "section 197 intangible" includes business books and records, operating systems, and any other information base including lists or other information with respect to current or prospective customers (regardless of the method of recording such information). Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the intangible value of technical manuals, training manuals or programs, data files, and

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accounting or inventory control systems is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring customer lists, subscription lists, insurance expirations,[127] patient or client files, or lists of newspaper, magazine, radio or television advertisers is to be amortized over the 14-year period specified in the bill.

Know-how.–The term "section 197 intangible" includes any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item. For this purpose, the term "section 197 intangible" is to include package designs, computer software, and any interest in a film, sound recording, video tape, book, or other similar property, except as specifically provided otherwise in the bill.[128]

Customer-based intangibles.–The term "section 197 intangible" includes any customer-based intangible, which is defined as the composition of market, market share, and any other value resulting from the future provision of goods or services pursuant to relationships with customers (contractual or otherwise) in the ordinary course of business. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of customer base, circulation base, undeveloped market or market growth, insurance in force, mortgage servicing contracts, investment management contracts, or other relationships with customers that involve the future provision of goods or services, is to be amortized over the 14-year period specified in the bill. On the other hand, the portion (if any) of the purchase price of an acquired trade or business that is attributable to accounts receivable or other similar rights to income for those goods or services that have been provided to customers prior to the acquisition of a trade or business is not to be taken into account under the bill.[129]

In addition, the bill specifically provides that the term "customer-based intangible" includes the deposit base and any similar asset of a financial institution. Thus, for example, the portion (if any) of the purchase price of an acquired financial institution that is attributable to the checking accounts, savings accounts, escrow accounts and other similar items of the financial institution is to be amortized over the 14-year period specified in the bill.

Supplier-based intangibles.–The term "section 197 intangible" includes any supplier-based intangible, which is defined as the ****995*764** value resulting from the future acquisition of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a favorable relationship with persons that provide distribution services (for example, favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts, is to be amortized over the 14-year period specified in the bill.[130]

Other similar items.–The term "section 197 intangible" also includes any other intangible property that is similar to workforce, information base, know-how, customer-based intangibles, or supplier-based intangibles.

Licenses, permits, and other rights granted by governmental units

The term "section 197 intangible" also includes any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period).[131] Thus, for example, the capitalized cost of acquiring from any person a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (which is sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license is to be amortized over the 14-year period specified in the bill. For purposes of the bill, the issuance or renewal of a license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof is to be considered an acquisition of such license, permit, or other right.

Covenants not to compete and other similar arrangements

The term "section 197 intangible" also includes any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete; hereafter "other similar arrangement") entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof). For this purpose, an interest in a trade or business includes not only the assets of a trade or business, but also stock in a corporation that is engaged in a trade or business or an interest in a partnership that is engaged in a trade or business.

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Any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof) is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill. In addition, any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) ****996*765** after the taxable year in which the covenant (or other similar arrangement) was entered into is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the covenant (or other similar arrangement) as of the beginning of the month that the amount is paid or incurred.

For purposes of this provision, an arrangement that requires the former owner of an interest in a trade or business to continue to perform services (or to provide property or the use of property) that benefit the trade or business is considered to have substantially the same effect as a covenant not to compete to the extent that the amount paid to the former owner under the arrangement exceeds the amount that represents reasonable compensation for the services actually rendered (or for the property or use of property actually provided) by the former owner. As under present law, to the extent that the amount paid or incurred under a covenant not to compete (or other similar arrangement) represents additional consideration for the acquisition of stock in a corporation, such amount is not to be taken into account under this provision but, instead, is to be included as part of the acquirer's basis in the stock.

Franchises, trademarks, and trade names

The term "section 197 intangible" also includes any franchise, trademark, or trade name. For this purpose, the term "franchise" is defined, as under present law, to include any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.[132] In addition, as provided under present law, the renewal of a franchise, trademark, or trade name is to be treated as an acquisition of such franchise, trademark, or trade name.[133]

The bill continues the present-law treatment of certain contingent amounts that are paid or incurred on account of the transfer of a franchise, trademark, or trade name. Under these rules, a deduction is allowed for amounts that are contingent on the productivity, use, or disposition of a franchise, trademark, or trade name only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or payable under a fixed formula.[134] Any other amount, whether fixed or contingent, that is paid or incurred on account of the transfer of a franchise, trademark, or trade name is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill.

Exceptions to the definition of a section 197 intangible

In general.–The bill contains several exceptions to the definition of the term "section 197 intangible." Several of the exceptions contained in the bill apply only if the intangible property is not acquired in a transaction (or series of related transactions) that involves ****997*766** the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business. It is anticipated that the Treasury Department will exercise its regulatory authority to require any intangible property that would otherwise be excluded from the definition of the term "section 197 intangible" to be taken into account under the bill under circumstances where the acquisition of the intangible property is, in and of itself, the acquisition of an asset which constitutes a trade or business or a substantial portion of a trade or business.

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. It is not intended, however, that the value of the assets acquired relative to the value of the assets retained by the transferor is determinative of whether the acquired assets constitute a substantial portion of a trade or business.

For purposes of the bill, a group of assets is to constitute a trade or business if the use of such assets would constitute a trade or business for purposes of section 1060 of the Code (i.e., if the assets are of such a character that goodwill or going concern value could under any circumstances attach to the assets). In addition, the acquisition of a franchise, trademark or trade name

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is to constitute the acquisition of a trade or business or a substantial portion of a trade or business.

In determining whether a taxpayer has acquired an intangible asset in a transaction (or series of related transactions) that involves the acquisition of assets that constitute a trade or business or a substantial portion of a trade or business, only those assets acquired in a transaction (or a series of related transactions) by a taxpayer (and persons related to the taxpayer) from the same person (and any related person) are to be taken into account. In addition, any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of assets are to be taken into account in determining whether the transferred assets constitute a trade or business or a substantial portion of a trade or business.

Interests in a corporation, partnership, trust, or estate.–The term "section 197 intangible" does not include any interest in a corporation, partnership, trust, or estate. Thus, for example, the bill does not apply to the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not such interests are regularly traded on an established market.[135]

Interests under certain financial contracts.–The term "section 197 intangible" does not include any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not such interest is regularly traded on an established market. Any interest under a mortgage servicing contract, credit card servicing contract or other contract to service indebtedness issued by another person, and any interest under an assumption reinsurance ****998*767** contract[136] is not excluded from the definition of the term "section 197 intangible" by reason of the exception for interests under certain financial contracts.

Interests in land.–The term "section 197 intangible" does not include any interest in land. Thus, the cost of acquiring an interest in land is to be taken into account under present law rather than under the bill. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral rights, timber rights, grazing rights, riparian rights, air rights, zoning variances, and any other similar rights with respect to land. An interest in land is not to include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television services.

The costs of acquiring licenses, permits, and other rights relating to improvements to land, such as building construction or use permits, are to be taken into account in the same manner as the underlying improvement in accordance with present law.

Certain computer software.–The term "section 197 intangible" does not include computer software (whether acquired as part of a trade or business or otherwise) that (1) is readily available for purchase by the general public; (2) is subject to a nonexclusive license; and (3) has not been substantially modified. In addition, the term "section 197 intangible" does not include computer software which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

For purposes of the bill, the term "computer software" is defined as any program (i.e., any sequence of machine-readable code) that is designed to cause a computer to perform a desired function. The term "computer software" includes any incidental and ancillary rights with respect to computer software that (1) are necessary to effect the legal acquisition of the title to, and the ownership of, the computer software, and (2) are used only in connection with the computer software. The term "computer software" does not include any data base or similar item (other than a data base or item that is in the public domain and that is incidental to the software)[137] regardless of the form in which it is maintained or stored.

If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible, the amount of the deduction is to be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service. For this purpose, the cost of any computer software that is taken into account as part of the cost of computer hardware or other tangible property under present law is to continue to be taken into account in such manner under the bill. In addition, the cost of any computer software that is currently deductible (i.e., not capitalized) under present law is to continue to be taken into account in such manner under the bill.

Certain interests in films, sound recordings, video tapes, books, or other similar property.–The term "section 197 intangible" does not ****999*768** include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit a live event) if the interest is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial

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portion of a trade or business.

Certain rights to receive tangible property or services.–The term "section 197 intangible" does not include any right to receive tangible property or services under a contract (or any right to receive tangible property or services granted by a governmental unit or an agency or instrumentality thereof) if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to a right to receive tangible property or services that is not a section 197 intangible, the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is anticipated that the regulations may provide that in the case of an amortizable right to receive tangible property or services in substantially equal amounts over a fixed period that is not renewable, the cost of acquiring the right will be taken into account ratably over such fixed period. It is also anticipated that the regulations may provide that in the case of a right to receive a fixed amount of tangible property or services over an unspecified period, the cost of acquiring such right will be taken into account under a method that allows a deduction based on the amount of tangible property or services received during a taxable year compared to the total amount of tangible property or services to be received.

For example, assume that a taxpayer acquires from another person a favorable contract right of such person to receive a specified amount of raw materials each month for the next three years (which is the remaining life of the contract) and that the right to receive such raw materials is not acquired as part of the acquisition of assets that constitute a trade or business or a substantial portion thereof (i.e., such contract right is not a section 197 intangible). It is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right ratably over the three-year remaining life of the contract. Alternatively, if the favorable contract right is to receive a specified amount of raw materials during an unspecified period, it is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right by multiplying such cost by a fraction, the numerator of which is the amount of raw materials received under the contract during any taxable year and the denominator of which is the total amount of raw materials to be received under the contract.

It is also anticipated that the regulations may require a taxpayer under appropriate circumstances to amortize the cost of acquiring a renewable right to receive tangible property or services over a period that includes all renewal options exercisable by the taxpayer at less than fair market value.

Certain interests in patents or copyrights.–The term "section 197 intangible" does not include any interest in a patent or copyright which is not acquired in a transaction (or a series of related transactions) ****1000*769** that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to an interest in a patent or copyright and the interest is not a section 197 intangible, then the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is expected that the regulations may provide that if the purchase price of a patent is payable on an annual basis as a fixed percentage of the revenue derived from the use of the patent, then the amount of the depreciation deduction allowed for any taxable year with respect to the patent equals the amount of the royalty paid or incurred during such year.[138]

Interests under leases of tangible property.–The term "section 197 intangible" does not include any interest as a lessor or lessee under an existing lease of tangible property (whether real or personal).[139] The cost of acquiring an interest as a lessor under a lease of tangible property where the interest as lessor is acquired in connection with the acquisition of the tangible property is to be taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, the portion (if any) of the purchase price of the shopping center that is attributable to the favorable attributes of the leases is to be taken into account as a part of the basis of the shopping center and is to be taken into account in determining the depreciation deduction allowed with respect to the shopping center.

The cost of acquiring an interest as a lessee under an existing lease of tangible property is to be taken into account under present law (see section 178 of the Code and Treas. Reg. sec. 1.162–11(a)) rather than under the provisions of the bill.[140] In the case of any interest as a lessee under a lease of tangible property that is acquired with any other intangible property (either in the same transaction or series of related transactions), however, the portion of the total purchase price that is allocable to

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the interest as a lessee is not to exceed the excess of (1) the present value of the fair market value rent for the use of the tangible property for the term of the lease,[141] over (2) the present value of the rent reasonably expected to be paid for the use of the tangible property for the term of the lease.

Interests under indebtedness.–The term "section 197 intangible" does not include any interest (whether as a creditor or debtor) under any indebtedness that was in existence on the date that the ****1001*770** interest was acquired.[142] Thus, for example, the value of assuming an existing indebtedness with a below-market interest rate is to be taken into account under present law rather than under the bill. In addition, the premium paid for acquiring the right to receive an above-market rate of interest under a debt instrument may be taken into account under section 171 of the Code, which generally allows the amount of the premium to be amortized on a yield-to-maturity basis over the remaining term of the debt instrument. This exception for interests under existing indebtedness does not apply to the deposit base and other similar items of a financial institution.

Professional sports franchises.–The term "section 197 intangible" does not include a franchise to engage in professional baseball, basketball, football, or other professional sport, and any item acquired in connection with such a franchise. Consequently, the cost of acquiring a professional sports franchise and related assets (including any goodwill, going concern value, or other section 197 intangibles) is to be allocated among the assets acquired as provided under present law (see, for example, section 1056 of the Code) and is to be taken into account under the provisions of present law.

Certain transaction costs.–The term section 197 intangible does not include the amount of any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C. This provision addresses a concern that some taxpayers might attempt to contend that the 14-year amortization provided by the provision applies to any such amounts that may be required to be capitalized under present law but that do not relate to any asset with a readily identifiable useful life.[143] The exception is provided solely to clarify that section 197 is not to be construed to provide 14-year amortization for any such amounts. No inference is intended that such amounts would (but for this provision) be properly characterized as amounts eligible for such 14-year amortization, nor is any inference intended that any amounts not specified in this provision should be so characterized. In addition, no inference is intended regarding the proper treatment of professional fees or transaction costs in other circumstances under present law.

Regulatory authority regarding rights of fixed term or duration.–The bill authorizes the Treasury Department to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration of less than 14 years or (B) is fixed as to amount[144] and ****1002*771** the cost is properly recoverable (without regard to this provision) under a method similar to the unit of production method.

Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of such right or whether it is for a fixed amount. However, the fact that competitive bidding occurs at the time of renewal and that there are or may be modifications in price (or in terms or requirements relating to the right that increase the cost to the bidder) shall not be within the scope of the preceding sentence unless the bidding also actually produces a fair market value price comparable to the price that would obtain if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's length transaction. Furthermore, it is expected that, as under present law, the Treasury Department will take into account all the facts and circumstances, including any facts indicating an actual practice of renewals or expectancy of renewals.

For example, assume Company A enters into a license with Company B to use certain know-how developed by B. In addition, assume that the license is for five years, that the license cannot be renewed by A except on terms that are fully available to A's competitors and that the price paid by A will reflect the arm's length price that a third party would pay A for the license immediately after renewal. Finally, assume that the license does not constitute a substantial portion of a trade or business and is not entered into as part of a transaction (or series of related transactions) that constitute the acquisition of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration.

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The regulations may also prescribe rules governing the extent to which renewal options and similar items will be taken into account for the purpose of determining whether rights are fixed in duration or amount. It is also anticipated that such regulations may prescribe the appropriate method of amortizing the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Exception for certain self-created intangibles

The bill generally does not apply to any section 197 intangible that is created by the taxpayer if the section 197 intangible is not created in connection with a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion thereof.

For purposes of this exception, a section 197 intangible that is owned by a taxpayer is to be considered created by the taxpayer if the intangible is produced for the taxpayer by another person under a contract with the taxpayer that is entered into prior to the ****1003*772** production of the intangible. For example, a technological process or other know-how that is developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process or know-how is to be considered created by the taxpayer.

The exception for "self-created" intangibles does not apply to the entering into (or renewal of) a contract for the use of a section 197 intangible. Thus, for example, the exception does not apply to the capitalized costs incurred by a licensee in connection with the entering into (or renewal of) a contract for the use of know-how or other section 197 intangible. These capitalized costs are to be amortized over the 14-year period specified in the bill.

In addition, the exception for "self-created" intangibles does not apply to: (1) any license, permit, or other right that is granted by a governmental unit or an agency or instrumentality thereof; (2) any covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (3) any franchise, trademark, or trade name. Thus, for example, the capitalized costs incurred in connection with the development or registration of a trademark or trade name are to be amortized over the 14-year period specified in the bill.

Special rules

Determination of adjusted basis

The adjusted basis of a section 197 intangible that is acquired from another person generally is to be determined under the principles of present law that apply to tangible property that is acquired from another person. Thus, for example, if a portion of the cost of acquiring an amortizable section 197 intangible is contingent, the adjusted basis of the section 197 intangible is to be increased as of the beginning of the month that the contingent amount is paid or incurred. This additional amount is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the intangible as of the beginning of the month that the contingent amount is paid or incurred.

Treatment of certain dispositions of amortizable section 197 intangibles

Special rules apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition,[145] the taxpayer retains other section 197 intangibles that were acquired in such transaction or series of related transactions.[146] First, no loss is to be recognized by ****1004*773** reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions are to be increased by the amount of any loss that is not recognized. The adjusted basis of any such retained section 197 intangible is increased by the product of (1) the amount of the loss that is not recognized solely by reason of this provision, and (2) a fraction, the numerator of which is the adjusted basis of the intangible as of the date of the disposition and the denominator of which is the total adjusted bases of all such retained section 197 intangibles as of the date of the disposition.

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For purposes of these rules, all persons treated as a single taxpayer under section 41(f)(1) of the Code are treated as a single taxpayer. Thus, for example, a loss is not to be recognized by a corporation upon the disposition of a section 197 intangible if after the disposition a member of the same controlled group as the corporation retains other section 197 intangibles that were acquired in the same transaction (or a series of related transactions) as the section 197 intangible that was disposed of. It is anticipated that the Treasury Department will provide rules for taking into account the amount of any loss that is not recognized due to this rule (for example, by allowing the corporation that disposed of the section 197 intangible to amortize the loss over the remaining portion of the 14-year amortization period).

Treatment of certain nonrecognition transactions

If any section 197 intangible is acquired in a transaction to which section 332, 351, 361, 721, 731, 1031, or 1033 of the Code applies (or any transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed),[147] the transferee is to be treated as the transferor for purposes of applying this provision with respect to the amount of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor.

For example, assume that an individual owns an amortizable section 197 intangible that has been amortized under section 197 for 4 full years and has a remaining unamortized basis of $300,000. In addition, assume that the individual exchanges the asset and $100,000 for a like-kind amortizable section 197 intangible in a transaction to which section 1031 applies. Under the bill, $300,000 of the basis of the acquired amortizable section 197 intangible is to be amortized over the 10 years remaining in the original 14-year amortization period for the transferred asset and the other $100,000 of basis is to be amortized over the 14-year period specified in the bill.[148]

****1005*774** Treatment of certain partnership transactions

Generally, consistent with the rules described above for certain nonrecognition transactions, a transaction in which a taxpayer acquires an interest in an intangible held through a partnership (either before or after the transaction) will be treated as an acquisition to which the bill applies only if, and to the extent that, the acquiring taxpayer obtains, as a result of the transaction, an increased basis for such intangible.[149]

For example, assume that A, B and C each contribute $700 for equal shares in partnership P, which on January 1, 1994, acquires as its sole asset an amortizable section 197 intangible for $2,100. Assume that on January 1, 1998, (1) the sole asset of P is the intangible acquired in 1994, (2) the intangible has an unamortized basis of $1,500 and A, B, and C each have a basis of $500 in their partnership interests, and (3) D (who is not related to A, B, or C) acquires A's interest in P for $800. Under the bill, if there is no section 754 election in effect for 1998, there will be no change in the basis or amortization of the intangible and D will merely step into the shoes of A with respect to the intangible. D's share of the basis in the intangible will be $500, which will be amortized over the 10 years remaining in the amortization period for the intangible.

On the other hand, if a section 754 election is in effect for 1998, then D will be treated as having an $800 basis for its share of P's intangible. Under section 197, D's share of income and loss will be determined as if P owns two intangible assets. D will be treated as having a basis of $500 in one asset, which will continue to be amortized over the 10 remaining years of the original 14-year life. With respect to the other asset, D will be treated as having a basis of $300 (the amount of step-up obtained by D under section 743 as a result of the section 754 election) which will be amortized over a 14-year period starting with January of 1998. B and C will each continue to share equally in a $1,000 basis in the intangible and amortize that amount over the remaining 10-year life.

As an additional example, assume the same facts as described above, except that D acquires both A's and B's interests in P for $1,600. Under section 708, the transaction is treated as if P is liquidated immediately after the transfer, with C and D each receiving their pro rata share of P's assets which they then immediately contribute to a new partnership. The distributions in liquidation are governed by section 731. Under the bill, C's interest in the intangible will be treated as having a $500 basis, with a remaining amortization period of 10 years. D will be treated as having an interest in two assets: one with a basis of $1,000 and a remaining amortization period of 10 years, and the other with a basis of $600 and a new amortization period of 14 years.

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As discussed more fully below, the bill also changes the treatment of payments made in liquidation of the interest of a deceased or retired partner in exchange for goodwill. Except in the case of payments made on the retirement or death of a general partner of a partnership for which capital is not a material income-producing ****1006*775** factor, such payments will not be treated as a distribution of partnership income. Under the bill, however, if the partnership makes an election under section 754, section 734 will generally provide the partnership the benefit of a stepped-up basis for the retiring or deceased partner's share of partnership goodwill and an amortization deduction for the increase in basis under section 197.

For example, using the facts from the preceding examples, assume that on January 1, 1998, A retires from the partnership in exchange for a payment from the partnership of $800, all of which is in exchange for A's interest in the intangible asset owned by P. Under the bill, if there is a section 754 election in effect for 1998, P will be treated as having two amortizable section 197 intangibles: one with a basis of $1,500 and a remaining life of 10 years, and the other with a basis of $300 and a new life of 14 years.

Treatment of certain reinsurance transactions

The bill applies to any insurance contract that is acquired from another person through an assumption reinsurance transaction (but not through an indemnity reinsurance transaction).[150] The amount taken into account as the adjusted basis of such a section 197 intangible, however, is to equal the excess of (1) the amount paid or incurred by the acquirer/reinsurer under the assumption reinsurance transaction,[151] over (2) the amount of the specified policy acquisition expenses (as determined under section 848 of the Code) that is attributable to premiums received under the assumption reinsurance transaction. The amount of the specified policy acquisition expenses of an insurance company that is attributable to premiums received under an assumption reinsurance transaction is to be amortized over the period specified in section 848 of the Code.

Treatment of amortizable section 197 intangible as depreciable property

For purposes of chapter 1 of the Internal Revenue Code, an amortizable section 197 intangible is to be treated as property of a character which is subject to the allowance for depreciation provided in section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221 of the Code, but an amortizable section 197 intangible held for more than one year generally qualifies as property used in a trade or business for purposes of section 1231 of the Code. As further examples, an amortizable section 197 intangible is to constitute section 1245 property, and section 1239 of the Code is to apply to any gain recognized upon the sale or exchange of an amortizable section 197 intangible, directly or indirectly, between related persons.

****1007*776** Treatment of certain amounts that are properly taken into account in determining the cost of property that is not a section 197 intangible

The bill does not apply to any amount that is properly taken into account under present law in determining the cost of property that is not a section 197 intangible. Thus, for example, no portion of the cost of acquiring real property that is held for the production of rental income (for example, an office building, apartment building or shopping center) is to be taken into account under the bill (i.e., no goodwill, going concern value or any other section 197 intangible is to arise in connection with the acquisition of such real property). Instead, the entire cost of acquiring such real property is to be included in the basis of the real property and is to be recovered under the principles of present law applicable to such property.

Modification of purchase price allocation and reporting rules for certain asset acquisitions

Sections 338(b)(5) and 1060 of the Code authorize the Treasury Department to promulgate regulations that provide for the allocation of purchase price among assets in the case of certain asset acquisitions. Under regulations that have been promulgated pursuant to this authority, the purchase price of an acquired trade or business must be allocated among the assets of the trade or business using the "residual method."

Under the residual method specified in the Treasury regulations, all assets of an acquired trade or business are divided into

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the following four classes: (1) Class I assets, which generally include cash and cash equivalents; (2) Class II assets, which generally include certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency; (3) Class III assets, which generally include all assets other than those included in Class I, II, or IV (generally all furniture, fixtures, land, buildings, equipment, other tangible property, accounts receivable, covenants not to compete, and other amortizable intangible assets); and (4) Class IV assets, which include intangible assets in the nature of goodwill or going concern value. The purchase price of an acquired trade or business (as first reduced by the amount of the assets included in Class I) is allocated to the assets included in Class II and Class III based on the value of the assets included in each class. To the extent that the purchase price (as reduced by the amount of the assets in Class I) exceeds the value of the assets included in Class II and Class III, the excess is allocable to assets included in Class IV.

It is expected that the present Treasury regulations which provide for the allocation of purchase price in the case of certain asset acquisitions will be amended to reflect the fact that the bill allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which the bill applies.

Section 1060 also authorizes the Treasury Department to require the transferor and transferee in certain asset acquisitions to furnish ***777**1008** information to the Treasury Department concerning the amount of any purchase price that is allocable to goodwill or going concern value. The bill provides that the information furnished to the Treasury Department with respect to certain asset acquisitions is to specify the amount of purchase price that is allocable to amortizable section 197 intangibles rather than the amount of purchase price that is allocable to goodwill or going concern value. In addition, it is anticipated that the Treasury Department will exercise its existing regulatory authority to require taxpayers to furnish such additional information as may be necessary or appropriate to carry out the provisions of the bill, including the amount of purchase price that is allocable to intangible assets that are not amortizable section 197 intangibles.[152]

General regulatory authority

The Treasury Department is authorized to prescribe such regulations as may be appropriate to carry out the purposes of the bill including such regulations as may be appropriate to prevent avoidance of the purposes of the bill through related persons or otherwise. It is anticipated that the Treasury Department will exercise its regulatory authority where appropriate to clarify the types of intangible property that constitute section 197 intangibles.

Study

The Treasury Department is directed to conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). The Treasury Department is to report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is to provide additional reports annually thereafter.

Report regarding backlog of pending cases

The purpose of the provision is to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern, and any principles established in such cases will no longer have precedential value due to the provision. Therefore, the Internal Revenue Service is urged in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedient and balanced manner, the Internal Revenue Service is strongly encouraged to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

The Treasury Department is required to report annually to the House Ways and Means Committee and the Senate Finance Committee, ****1009*778** regarding the volume of pending disputes in audit and litigation involving the amortization of

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intangibles and the progress made in resolving such disputes. It is expected that the report will also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. The first such report is to be made no later than December 31, 1994.

EFFECTIVE DATE

In general

The provision generally applies to property acquired after the date of enactment of the bill. As more fully described below, however, a taxpayer may elect to apply the bill to all property acquired after July 25, 1991. In addition, a taxpayer that does not make this election may elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill pursuant to a binding written contract in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. Finally, special "anti-churning" rules may apply to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Election to apply bill to property acquired after July 25, 1991

A taxpayer may elect to apply the bill to all property acquired by the taxpayer after July 25, 1991. If a taxpayer makes this election, the bill also applies to all property acquired after July 25, 1991, by any taxpayer that is under common control with the electing taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)) of the Code) at any time during the period that began on November 22, 1991, and that ends on the date that the election is made.[153]

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[154] and the election may be revoked only with the consent of the Treasury Department.

Elective binding contract exception

A taxpayer may also elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill if the property is acquired pursuant to a binding written contract that was in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. This election may not be made by any taxpayer that is subject to ****1010*779** either of the elections described above that apply the provisions of the bill to property acquired before the date of enactment of the bill.

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[155] and the election may be revoked only with the consent of the Treasury Department.

Anti-churning rules

Special rules are provided by the bill to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Under these "anti-churning" rules, goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill [156] may not be amortized as an amortizable section 197 intangible if: (1) the section 197 intangible is acquired by a taxpayer after the date of enactment of the bill; and (2) either (a) the taxpayer or a related person held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill; (b) the taxpayer acquired the intangible from a person that held such intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible at any time during the period that

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begins on July 25, 1991, and that ends on the date of enactment of the bill. The anti-churning rules, however, do not apply to the acquisition of any intangible by a taxpayer if the basis of the intangible in the hands of the taxpayer is determined under section 1014(a) (relating to property acquired from a decedent).

For purposes of the anti-churning rules, a person is related to another person if: (1) the person bears a relationship to that person which would be specified in section 267(b)(1) or 707(b)(1) of the Code if those sections were amended by substituting 20 percent for 50 percent; or (2) the persons are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code). A person is treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

In addition, in determining whether the anti-churning rules apply with respect to any increase in the basis of partnership property under section 732, 734, or 743 of the Code, the determinations are to be made at the partner level and each partner is to be treated as having owned or used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to any increase in the basis of partnership property ****1011*780** that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest is not related to the person selling the partnership interest.[157]

These "anti-churning" rules are not to apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer to the extent that: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain which, when added to any other Federal income tax imposed on such gain, equals the product of such gain and the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller is treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

The bill also contains a general anti-abuse rule that applies to any section 197 intangible that is acquired by a taxpayer from another person. Under this rule, a section 197 intangible may not be amortized under the provisions of the bill if the taxpayer acquired the intangible in a transaction one of the principal purposes of which is to (1) avoid the requirement that the intangible be acquired after the date of enactment of the bill or (2) avoid any of the anti-churning rules described above that are applicable to goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill.

Finally, the special rules described above that apply in the case of transactions described in section 332, 351, 361, 721, 731, 1031, or 1033 of the Code also apply for purposes of the effective date. Consequently, if the transferor of any section 197 property is not allowed an amortization deduction with respect to such property under this provision, then the transferee is not allowed an amortization deduction under this provision to the extent of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor. In addition, this provision is to apply to any subsequent transfers of any such property in a transaction described in section 332, 351, 361, 721, 731, 1031, or 1033.

****1012*781** 2. Modify special treatment of certain liquidation payments (sec. 14262 of the bill and sec. 736 of the Code)

PRESENT LAW

Payments for purchase of goodwill and accounts receivable

A current deduction generally is not allowed for a capital expenditure (i.e., an expenditure that yields benefits beyond the current taxable year). The cost of goodwill acquired in connection with the assets of a going concern normally is a capital expenditure, as is the cost of acquiring accounts receivable. The cost of acquiring goodwill is recovered only when the goodwill is disposed of, while the cost of acquiring accounts receivable is taken into account only when the receivable is disposed of or becomes worthless.

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Payments made in liquidation of partnership interest

The tax treatment of a payment made in liquidation of the interest of a retiring or deceased partner depends upon whether the payment is made in exchange for the partner's interest in partnership property. A liquidating payment made in exchange for such property is treated as a distribution by the partnership (sec. 736(b)). Such distribution generally results in gain to the retiring partner only to the extent that the cash distributed exceeds such partner's adjusted basis in the partnership interest.

A liquidating payment not made in exchange for the partner's interest in partnership property receives either of two possible treatments. If the amount of the payment is determined without reference to partnership income, it is treated as a guaranteed payment and is generally deductible (sec. 736(a)(2)). If the amount of payment is determined by reference to partnership income, the payment is treated as a distributive share of partnership income, thereby reducing the distributive shares of other partners (which is equivalent to a deduction) (sec. 736(a)(2)).

A special rule treats amounts paid for goodwill of the partnership (except to the extent provided in the partnership agreement) and unrealized receivables as not made in exchange for an interest in partnership property (sec. 736(b)(2)(B)). Thus, such amounts may be deductible. Unrealized receivables include unbilled amounts, accounts receivable, depreciation recapture, market discount, and certain other items (sec. 751(c)).

Sale or exchange of a partnership interest

The sale or exchange of a partnership interest results in capital gain or loss to the transferor partner, except to the extent that ordinary income or loss is recognized with respect to the partner's share of the partnership's unrealized receivables and substantially appreciated inventory items (sec. 741). It is often unclear whether a payment by a partnership to a retiring partner is made in sale or exchange of, or in liquidation of, a partnership interest.

****1013*782** REASONS FOR CHANGE

In general

By treating a payment for unstated goodwill and unrealized receivables as a guaranteed payment or distributive share, present law in effect permits a deduction for an amount that would otherwise constitute a capital expenditure. This treatment does not measure partnership income properly. It also threatens to erode the rule requiring capitalization of such payments generally. Under present law, a prospective buyer of a business may structure the transaction so as to currently deduct such an amount by first entering into a partnership with the seller and then liquidating the seller's partnership interest.

Section 736 was intended to simplify the taxation of payments in liquidation. Instead, it has created confusion as to whether a particular payment is a payment in liquidation or is made pursuant to a sale of the partnership interest to the continuing partners. The proposal reduces this confusion by eliminating a primary difference between sales and liquidations.

The special treatment of goodwill was apparently predicated on the assumption that the adverse positions of the taxpayers will result in a stated price equal to the true value of the goodwill. That assumption is false. If the value of the preferential rate (if any) and the income deflection are not equal, the stated goodwill and total retirement payments will likely be set so as to maximize the combined tax savings for both retiring and continuing partners.

It is recognized, however, that general partners in service partnerships do not ordinarily value goodwill in liquidating partners. Accordingly, such partners may continue to receive the special rule of present law.

Unrealized receivables

When originally enacted, the term "unrealized receivables" was limited to unbilled amounts and accounts receivable. The tax deferral resulting from immediate deduction of amounts paid for these items is relatively short because payment is usually received in the near future. Such deferral is considerably longer, however, with respect to the deduction of other items now

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included in the expanded definition of unrealized receivables, such as depreciation recapture on business assets, which are slow to give rise to ordinary income.

EXPLANATION OF PROVISION

In general

The bill generally repeals the special treatment of liquidation payments made for goodwill and unrealized receivables. Thus, such payments would be treated as made in exchange for the partner's interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent. The bill does not change present law with respect to payments made to a general partner in a partnership in which capital is not a material income-producing factor. The determination of whether capital is a material income-producing factor would be ****1014*783** made under principles of present and prior law. [158] For purposes of this provision, capital is not a material income-producing factor where substantially all the gross income of the business consists of fees, commissions, or other compensation for personal services performed by an individual. The practice of his or her profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is a material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which such individual conducts his or her practice so long as such capital investment is merely incidental to such professional practice. In addition, the bill does not affect the deductibility of compensation paid to a retiring partner for past services.

Unrealized receivables

The bill also repeals the special treatment of payments made for unrealized receivables (other than unbilled amounts and accounts receivable) for all partners. Such amounts would be treated as made in exchange for the partner's interest in partnership property. Thus, for example, a payment for depreciation recapture would be treated as made in exchange for an interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent.

EFFECTIVE DATE

The provision generally applies to partners retiring or dying on or after January 5, 1993. The provision does not apply to any partner who retires on or after January 5, 1993, if a written contract to purchase the partner's interest in the partnership was binding on January 4, 1993 and at all times thereafter until such purchase. For this purpose, a written contract is to be considered binding only if the contract specifies the amount to be paid for the partnership interest and the timing of any such payments.

G. MISCELLANEOUS REVENUE-INCREASE PROVISIONS

1. Substantiation and disclosure requirements for charitable contributions (secs. 14271 and 14272 of the bill and sec. 170 and new secs. 6115 and 6714 of the Code)

PRESENT LAW

An individual taxpayer who itemizes deductions must separately state (on Schedule A to the Form 1040) the aggregate amount of charitable contributions made by cash or check and the aggregate amount made by donated property other than cash or check.

A taxpayer is not required to provide specific information on his or her return regarding a claimed charitable contribution

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made by cash or check; nor in such a case is a donee organization required to file an information return with the IRS, regardless of the amount of cash or check involved. However, taxpayers must provide ****1015*784** certain information (on Form 8283) if the amount of the claimed deduction for all noncash contributions exceeds $500.[159]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the payor receives an economic benefit is not deductible under section 170, except to the extent that the taxpayer can demonstrate that the payment exceeds the fair market value of the benefit received from the charity.[160]

The Code does not require a tax-exempt organization that is eligible to receive tax-deductible contributions to state explicitly, in its solicitations for support from members or the general public, whether an amount paid to the organization is deductible as a charitable contribution or whether all or part of the payment constitutes consideration for goods or services furnished to the payor.[161] In contrast, tax-exempt organizations that are not eligible to receive tax-deductible contributions are required to state expressly in certain fund-raising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113).[162] A penalty is imposed on such organizations for failure to comply with the section 6113 disclosure requirement, unless reasonable cause is shown (sec. 6710).

Tax-exempt organizations generally are required to file an annual information return (Form 990) with the IRS. However, churches (and their affiliated organizations), as well as tax-exempt organizations (other than private foundations) that normally have gross receipts in each taxable year of not more than $25,000, are not required to file the Form 990.[163] If a charity is required to file a Form 990, then it must report, among other items, the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more (in cash or other property) during the taxable year.[164]

****1016*785** REASONS FOR CHANGE

Difficult problems of tax administration arise with respect to fundraising techniques in which an organization that is eligible to receive tax deductible contributions provides goods or services in consideration for payments from donors. Organizations that engage in such fundraising practices often do not inform their donors that all or a portion of the amount paid by the donor may not be deductible as a charitable contribution. Consequently, the committee believes that there will be increased compliance with present-law rules governing charitable contribution deductions if a taxpayer who claims a separate charitable contribution of $750 or more is required to obtain substantiation from the donee indicating the amount of the contribution and whether any goods, service, or privilege was received by the donor in exchange for making the contribution. In addition, the committee believes it is appropriate that, in all cases where a charity receives a quid pro quo contribution (i.e., a payment made partly as a contribution and partly in consideration for goods or services furnished to the payor by the donee organization), the charity should inform the donor that the deduction under section 170 is limited to the amount by which the payment exceeds the value of goods or services furnished by the charity, and should provide a good faith estimate of the value of such goods or services.

EXPLANATION OF PROVISION

The bill contains the following two provisions that require substantiation and disclosure relating to charitable contributions:

Substantiation requirement

Section 170 is amended to provide that no deduction is allowed under that section for any contribution of $750 or more[165] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).[166]

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a contribution of $750 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange).[167] Taxpayers may not rely solely on a canceled check as substantiation for a donation of $750 or more.

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****1017*786** Under the provision, the substantiation must be obtained by the taxpayer prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for filing such return).[168] Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.

Information disclosure for quid pro quo contributions

A charitable organization that receives a quid pro quo contribution (meaning "a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization") will be required, in connection with the solicitation or receipt of such a contribution, to (1) inform the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provide the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.[169]

The disclosure requirement applies to all quid pro quo contributions regardless of the dollar amount of the contribution involved (e.g., even in cases with payments of less than $750), and the disclosure must be made by the charity in connection with either the solicitation or receipt of the contribution. Thus, for example, if a charity receives a $75 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor that only $35 is deductible as a charitable contribution. However, the provision will not apply if only de minimis, token goods or services are given to a donor (see Rev. Procs. 90–12 and 92–49, discussed above).[170] Also, the provision will not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure ****1018*787** in connection with a quid pro quo contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

EFFECTIVE DATE

The provision is effective for contributions made after December 31, 1993.[171]

2. Expansion of 45-day interest-free period for certain refunds (sec. 14273 of the bill and 6611(e) of the Code)

PRESENT LAW

No interest is paid by the Government on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (sec. 6611(e)).

There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax.

If a taxpayer files a timely original return with respect to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, the IRS will pay the refund with interest computed from the due date of the original return.

REASONS FOR CHANGE

The committee believes that it is inappropriate for the payment of interest on tax refunds to be determined by the type of tax

involved; all types of taxes should be treated similarly. The committee further believes that it is appropriate to alter the interest rules to provide a 45-day processing period with respect to amended returns, claims for refund and IRS-initiated adjustments.

EXPLANATION OF PROVISION

No interest is to be paid by the Government on a refund arising from any type of original tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed.

A parallel rule applies to amended returns and claims for refunds: if the refund is issued by the 45th day after the date the amended return or claim for refund is filed, no interest is to be paid by the Government for that period of up to 45 days (interest would continue to be paid for the period from the due date of the return to the date ****1019** the amended return or claim for refund is filed). If the IRS does not issue the refund by the 45th day after the date ***788** the amended return or claim for refund is filed, interest would be paid (as under present law) for the period from the due date of the original return to the date the IRS pays the refund.

A parallel rule also applies to IRS-initiated adjustments (whether due to computational adjustments or audit adjustments). With respect to these adjustments, the IRS is to pay interest for 45 fewer days than it otherwise would.

EFFECTIVE DATE

The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after January 1, 1994. The amended return rule is effective for amended returns and claims for refunds filed on or after January 1, 1995 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments applies to refunds paid on or after January 1, 1995 (regardless of the taxable period to which they relate).

3. Deny deductions relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 14274 of the bill and sec. 274(m) of the Code)

PRESENT LAW

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year (1) in carrying on any trade or business and (2) in the case of an individual, for the production of income. Such deductible expenses may include reasonable travel expenses paid or incurred while away from home, such as transportation costs and the cost of meals and lodging.

In the case of ordinary and necessary business expenses, if a taxpayer travels to a destination and while at that destination engages in both business and personal activities, travel expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, expenses while at the destination that are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible (Treas. Reg. sec. 1.162–2(b)(1)).

Under Treasury regulations, if the taxpayer's spouse accompanies the taxpayer on a business trip, expenses attributable to the spouse's travel are not deductible unless it is adequately shown that the spouse's presence on the trip has a bona fide business purpose (Treas. reg. sec. 1.162–2(c)). The performance of some incidental service by the spouse does not cause the expenses to qualify as deductible business expenses. Under the Treasury regulations, the same rules apply to any other members of the taxpayer's family who accompany the taxpayer on such a trip.

REASONS FOR CHANGE

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The committee believes that no deduction should be allowed for travel expenses paid or incurred with respect to a spouse, dependent, ****1020*789** or other individual accompanying a person on business travel unless such expenses are legitimate business expenses of the taxpayer claiming the deduction. The committee believes that merely accompanying or being related to the traveling employee does not convert otherwise nondeductible personal expenses to deductible business expenses.

EXPLANATION OF PROVISION

The bill denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless (1) the spouse, dependent, or other individual accompanying the person is a bona fide employee of the person paying or reimbursing the expenses, (2) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and (3) the expenses of the spouse, dependent, or other individual would otherwise be deductible. No inference is intended as to the deductibility of these expenses under present law. The denial of the deduction does not apply to expenses that would otherwise qualify as deductible moving expenses.

EFFECTIVE DATE

The provision is effective for amounts paid or incurred after December 31, 1993.

4. Increase withholding rate on supplemental wage payments (sec. 14275 of the bill and sec. 3402(g) of the Code)

PRESENT LAW

Under Treasury regulations, withholding on supplemental wage payments (such as bonuses, commissions, and overtime pay) that are not paid concurrently with wages (or that are paid concurrently with wages, but are separately stated) for a payroll period may be done at a rate of 20 percent (at the employer's election) (Treas. Reg. sec. 31.3402(g)-1).[172]

REASONS FOR CHANGE

The committee believes that it is appropriate to raise the withholding rate on supplemental wage payments so that withholding more closely approximates the ultimate tax liability with respect to these payments.

EXPLANATION OF PROVISION

The bill increases the applicable withholding rate on supplemental wage payments to 28 percent.

****1021*790** EFFECTIVE DATE

The provision is effective for payments made after December 31, 1993.

***791** III. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES, ETC.

A. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES (SECS. 14301–14304 OF THE BILL AND SECS. 1391–1393 OF THE CODE)

PRESENT LAW

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax

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treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

REASONS FOR CHANGE

The committee believes that special consideration should be given to the problems of distressed urban and rural areas. Revitalization of economically distressed areas through expanded business and employment opportunities, especially for residents of those distressed areas, should help alleviate both economic and social problems, including distress resulting from narcotics and crime. The committee believes that Federal tax incentives could play a role in revitalizing distressed areas. The committee also believes that Federal tax incentives for distressed areas should be provided in conjunction with State and local programs.

EXPLANATION OF PROVISIONS

Designation of eligible areas

In general

A total of 10 empowerment zones and 100 enterprise communities will be designated (subject to availability of eligible areas) during 1994 and 1995. Empowerment zones and enterprise communities will be designated from areas nominated by State and local governments or a governing body of an Indian reservation.[173] Empowerment zones will be eligible for additional tax incentives beyond those provided in the areas designated as enterprise communities.

****1022*792** The Secretary of Housing and Urban Development (HUD) will designate in eligible urban areas six empowerment zones and 65 enterprise communities. (The six empowerment zones located in urban areas will include at least one zone in an urban area the most populous city of which has a population of 500,000 or less.) The Secretary of Agriculture will designate in eligible rural areas[174] three empowerment zones and 30 enterprise communities. In addition, the Secretary of the Interior will designate in eligible Indian reservation areas one empowerment zone and five enterprise communities.[175] Nominated areas located in Indian reservations also will be eligible for designation (provided the bill's criteria are met) as rural areas. All designations will be made in consultation with an Enterprise Board (to be established in the future), which will include officials from various Federal agencies. The designations will be made prior to January 1, 1996.

Designations of areas as empowerment zones or enterprise communities generally will remain in effect for 10 years. An area's designation could be revoked if the local government(s) or State(s) modifies the boundaries of the designated area or does not comply with its agreed-upon strategic plan for the area (described below).[176]

Eligibility criteria for zones

The eligibility criteria for urban areas, rural areas, and Indian reservations generally are the same (except as noted below). To be eligible for designation, a nominated area is required to possess all of the following characteristics:

Resident population.–An eligible urban area is subject to a maximum population of the lesser of (1) 200,000, or (2) the greater of 50,000 or 10 percent of the population of the most populous city within the nominated area. (In addition, the Secretary of HUD is required to designate empowerment zones located in urban areas in such a manner that the aggregate population of such zones does not exceed 750,000.) Rural areas are subject to a maximum population of 30,000. Indian reservations are not subject to a population limit.

General condition.–An eligible area must have a condition of pervasive poverty, unemployment, and general economic distress (which may include distress from a high incidence of crime and narcotics use).

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Area.–The nominated area must either (1) have a continuous boundary, or (2) except in the case of a rural area located in more than one State, consist of not more than three noncontiguous parcels. Urban areas must be located entirely within no more than two contiguous States, and rural areas must be located entirely within no more than three contiguous States.

****1023*793** Size.–The nominated area must not exceed (1) 20 square miles for urban areas, or (2) 1,000 square miles for rural areas and Indian reservations.

Poverty.–Each of the census tracts within a nominated area must have a poverty rate of at least 20 percent;[177] at least 90 percent of the area's census tracts must each have a poverty rate of at least 25 percent; and at least 50 percent of the area's census tracts must each have a poverty rate of at least 35 percent.[178] For purposes of these measurements, unpopulated census tracts and census tracts with limited populations and 75 percent or more zoned for commercial or industrial use will be treated as satisfying the bill's 20-percent and 25-percent poverty rate criteria. With respect to empowerment zones, each census tract located in a central business district (as such term is used for purposes of the most recent Census of Retail Trade) must have a poverty rate of at least 35 percent. With respect to enterprise communities, each census tract located in a central business district must have a poverty rate of at least 30 percent.[179] If the nominated area consists of noncontiguous parcels, each parcel must separately satisfy the above poverty criteria.

Strategic plan.–A strategic plan must be submitted by the nominating body for purposes of accomplishing the goals of this legislation.

Contents of strategic plan

In order for a nominated area to be eligible for designation, the local government(s) and State(s) in which the area is located[180] are required to provide a strategic plan that: (1) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area; (2) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process; (3) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities; (4) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities; (5) identifies baselines, methods, and benchmarks****1024*794** for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and (6) generally does not include any action to assist any establishment in relocating from an area outside the nominated area to the nominated area.[181]

Selection process and criteria

From among the eligible areas, designations of empowerment zones and enterprise communities will be made on the basis of (1) the effectiveness of the strategic plan for a nominated area and the assurances that such plan will be implemented and (2) criteria specified by the Enterprise Board.

Tax incentives for empowerment zones

Employer wage credit

A 25-percent credit against income tax liability is available to all employers for the first $20,000 of qualified wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone),[182] and (2) performs substantially all employment services within the zone in a trade or business of the employer.

The maximum credit per qualified employee is $5,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages will be eligible for the

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credit.[183] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the investment tax incentives described below).[184]

The credit will be phased out beginning in 2001. The credit rate will be reduced to 20 percent in 2001, 15 percent in 2002, 10 percent in 2003, and five percent in 2004. The credit will not be available after December 31, 2004.

Qualified wages include the first $20,000 of "wages," defined to include (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are ****1025*795** paid to an unrelated third party and are excludable from gross income of the employee under section 127 (which is retroactively and permanently extended under another provision of the bill), or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.[185]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year. Wages are not to be taken into account for purposes of the empowerment zone employment credit if taken into account in determining the employer's targeted jobs tax credit (TJTC).

The credit is allowable to offset up to 25 percent of alternative minimum tax liability.

Expansion of targeted jobs tax credit (TJTC)

The present-law targeted jobs tax credit (sec. 51) is expanded so that an economically disadvantaged person[186] who resides in an empowerment zone but is employed outside of an empowerment zone will be treated as a member of a targeted group for purposes of that credit.[187] Thus, employers located outside of empowerment zones are entitled to claim the 40-percent TJTC credit on up to $6,000 of qualified first-year wages paid to economically disadvantaged employees who reside within an empowerment zone. An employer located in an empowerment zone may be able to claim the TJTC with respect to wages paid to a member of another targeted group (e.g., a qualified summer youth employee or a participant in a school-to-work program), but such an employer may not utilize the bill's expanded TJTC provision for certain empowerment zone residents who work outside of the zone.

As under present law, an employer's deduction otherwise allowed for wages paid is reduced by the amount of TJTC claimed for that taxable year.

****1026*796** Empowerment savings credit

A tax credit is available to employers for certain contributions made to a tax-qualified defined contribution plan on behalf of employees with respect to whom the wage credit could be claimed. Thus, in general, this credit is available with respect to contributions made on behalf of employees who (1) are zone residents and (2) perform substantially all employment services within the zone in a trade or business of the employer.[188] The credit is equal to 50 percent of contributions up to two percent of compensation (as defined in sec. 414(s)) not in excess of $35,000. If an area is not designated as an empowerment zone for an entire taxable year, the $35,000 compensation limit is ratably reduced to reflect the portion of the year the designation is not in effect.

The credit is available for contributions to any tax-qualified defined contribution plan other than an employee stock ownership plan, stock bonus plan, or a plan subject to the minimum funding requirements (sec. 412). Contributions may also be made to a simplified employee pension (as defined in sec. 408(k) (SEP)). Except as specifically provided, the rules

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applicable to qualified plans and SEPs (as the case may be) apply to contributions for which the credit is available.

To be eligible for the credit, the employer contribution must be 100 percent vested, and must be either a matching or nonelective contribution; salary reduction contributions are not eligible for the credit. The plan is required to permit an employee with respect to whom the credit can be claimed to withdraw contributions from the plan (and earnings thereon) for higher education or health expenses, first-time home purchase, or to invest in a qualified enterprise zone business. A plan that permits such withdrawals will not fail to be a tax-qualified plan merely because it does so. The 10-percent early withdrawal tax (sec. 72(t)) will not apply to such withdrawals. The special withdrawal provisions apply only while the employee meets the qualifications for the credit.

The credit is available in lieu of the otherwise available deduction for the contributions and may be claimed in addition to the employment and training credit. The credit is elective.

Definition of "enterprise zone business"

The investment tax incentives for empowerment zones described below (but not the labor incentives described above) are available only with respect to trade or business activities that satisfy the criteria for an "enterprise zone business." Under the proposal, an "enterprise zone business" is defined as a corporation or partnership (or proprietorship) if for the taxable year: (1) the sole trade or business of the corporation or partnership is the active conduct of a qualified business within an empowerment zone;[189] (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within a zone; (3) substantially all of the ****1027*797** use of its tangible property occurs within a zone; (4) substantially all of its intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone; (6) at least 35 percent of the employees are residents of the zone[190] ; and (7) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[191] In addition, the leasing of real property that is located within the empowerment zone to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

Activities of legally separate (even if related) parties would not be aggregated for purposes of determining whether an entity qualifies as an enterprise zone business.

Increased section 179 expensing

The expensing allowance for certain depreciable business property provided under section 179 is increased to $75,000 for qualified zone property of an enterprise zone businesses (as defined above). In addition, the types of property eligible for section 179 expensing are expanded to include buildings used in enterprise zone businesses.

"Qualified zone property" is defined as depreciable tangible property (including buildings), provided that: (1) such property was acquired by the taxpayer (but not from a related party) after the zone designation took effect; (2) the original use of the property in the zone commences with the taxpayer[192] ; and (3) substantially all of the use of the property is in the zone in the active conduct of a trade or business by the taxpayer in the zone. In the case of property which is substantially renovated by the taxpayer, however, such property need not be acquired by the taxpayer after zone designation or originally used by the taxpayer within the zone if during ****1028*798** any 24-month period after zone designation the additions to the taxpayer's basis in such property exceed 100 percent of the taxpayer's basis in such property at the beginning of the period or $5,000 (whichever is greater).[193]

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in qualified

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property during the taxable year above a specified threshold. However, under the bill, the present-law phase-out range is applied by decreasing the amount of the cost of qualified zone property that is deductible under section 179 by one-half of the amount by which the cost of qualified zone property (other than real estate) and other section 179 property exceeds $200,000. Thus, the section 179 deduction applicable to qualified zone property is completely phased-out when the cost of qualified zone property (other than real estate) and other section 179 property placed in service during the taxable year reaches $350,000. For example, assume that a taxpayer places $270,000 of qualified zone property (none of which is real estate) in service during the taxable year and that the taxpayer does not place any property in service outside the zone. Under the bill, the taxpayer will be allowed to claim a section 179 deduction of $40,000 ($75,000 section 179 amount less $35,000 (one-half of the difference between $270,000 and $200,000)).

As under present-law section 179, all component members of a controlled group are treated as one taxpayer for purposes of the expensing allowance and application of the phaseout range (sec. 179(d)(6)). Also, as under present law, the $75,000 expensing allowance is to apply at both the partnership (and S corporation) and partner (and shareholder) levels.

The increased expensing allowance would apply for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in a enterprise zone business (under rules similar to present-law section 179(d)(10)).

Accelerated depreciation

An enterprise zone business (as defined above) will determine depreciation deductions with respect to "qualified zone property"[194] (also defined above) by using the following recovery periods:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1029*799** The shorter recovery periods allowed for qualified zone property of enterprise zone businesses will be allowed for alternative minimum tax purposes.

Tax-exempt financing

In general.–The bill creates a new category of exempt facility private activity bonds, qualified enterprise zone facility bonds for use in empowerment zones. Generally qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which is used to finance qualified zone property (as generally defined under the bill) for a qualified enterprise zone business (as generally defined under the bill) and land located in the empowerment zone which is functionally related and subordinate to the qualified zone property. These bonds may only be issued while a zone designation is in effect.

Special rules on issue size and use to finance certain facilities.–The aggregate face amount of all outstanding qualified enterprise zone bonds per qualified enterprise zone business may not exceed $3 million for each zone. In addition total outstanding qualified enterprise zone bond financing for each qualified enterprise zone business may not exceed $20 million for all zones. For purposes of these determinations, the aggregate amount of outstanding enterprise zone facility bonds allocable to any business shall be determined under rules similar to rules contained in section 144(a)(10).

As with other exempt facility bonds, these bonds may be issued only to finance identified facilities. The committee does not intend, however that the $3 million per enterprise zone business requirement will limit issuance of a single issue of bonds (in excess of $3 million) for more than one identified facility, provided that the $3 million limit is satisfied with respect to each zone business. However the committee realizes that ease of marketing these exempt facility bonds like other exempt facility bonds may require common marketing of separate issues of bonds for discrete facilities if such issues are simultaneous or proximate in time.

The bill exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds are exempted from the general restriction on financing land (or an interest therein) with 25 percent or more of the net proceeds of a bond issue (sec. 147(c)(1)(A)). Unless otherwise noted, all tax-exempt bond rules relating to exempt facility bonds shall apply to qualified enterprise zone facility bonds.

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Penalty for failure to continue as zone business or to use bond-financed property in the zone business.–The bill extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs. This penalty is waived if: (1) the issuer and principal user in good faith attempted to meet these requirements and (2) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered. This penalty does not apply ****1030*800** solely by reason of the termination or revocation of a designation as an empowerment zone. The good faith rule described above also applies to certain other requirements of qualified enterprise zone facility bonds.

Partial exemption from State volume limitations.–Under the bill, only 25 percent of the amount of qualified enterprise zone facility bonds is subject to the State private activity volume cap, provided that enterprise zone residents possess more than a 50-percent ownership interest in the principal user of the bond-proceeds. If the resident ownership requirement is not satisfied, then 50 percent of the qualified enterprise zone facility bonds (rather than 25 percent) is subject to the State private activity volume cap.

Exception from bank pro rata interest deduction disallowance.–The bill exempts financial institutions to the extent that they have invested in qualified enterprise zone facility bonds from the general rule denying them a ratable portion of their otherwise allowable interest expense deductions (sec. 265(b)).

Tax incentives available in both empowerment zones and enterprise communities

Tax-exempt financing

Under the bill, the tax-exempt financing benefits described above are available (with one modification) to otherwise qualifying businesses that are located in enterprise communities. The one modification to the tax-exempt financing benefits is that 50 percent (rather than 25 percent) of the amount of the enterprise zone facility bonds is subject to the State private activity volume cap, regardless of whether enterprise zone residents possess more than a 50 percent ownership interest in the principal user of the bond-proceeds.

Low-income housing credit (LIHC) expansion

For purposes of the low-income housing credit (sec. 42)[195] , a building located (1) in an empowerment zone or an enterprise community, and (2) in a census tract having a poverty rate of at least 30 percent will be treated as being located in a "difficult to develop" area, within which the eligible basis of buildings for purposes of computing the credit is 130 percent of the cost basis. (Thus, the credit will be based on 91 percent of present value instead of the regular LIHC rate of 70 percent of present value.) The present-law State credit cap and other rules continue to apply.

The bill also provides an additional housing credit dollar amount of $818,000 to each empowerment zone and enterprise community. Allocation of this amount may be made over a three-year period. This amount is available for allocation only during calendar years 1994, 1995, and 1996. The committee intends that these amounts be allocated in a way that will not displace, but will supplement, allocations to low-income housing credit buildings located within empowerment zones and enterprise communities.

****1031*801** EFFECTIVE DATE

Empowerment zone and enterprise community designations will be made only during calendar years 1994 and 1995. The tax incentives will be available during the period that the designation remains in effect, which generally will be a period of 10 years.

B. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS (SEC.

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14311 OF THE BILL AND SEC. 38 OF THE CODE)

PRESENT LAW

There are no tax credits available for contributions to community development corporations (CDC).

REASONS FOR CHANGE

The committee believes that special consideration should be given to the problems of distressed urban and rural areas. Revitalization of economically distressed areas through expanded business and employment opportunities, especially for residents of those distressed areas, should help alleviate both economic and social problems. The committee believes it is important to encourage participation of the private sector in these revitalization efforts.

EXPLANATION OF PROVISION

Under the provision, a taxpayer will receive a credit for qualified cash contributions made to certain community development corporations (CDCs). If a taxpayer makes a qualified contribution, the credit may be claimed by the taxpayer for each taxable year during a 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to five percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totalling 50 percent of the contribution.

For purposes of this provision, a qualified contribution is defined as any transfer of cash that meets the following requirements: (1) it is made to one of up to 10 CDCs selected by the Secretary of HUD, provided that the contribution is made during the five-year period after the CDC is so selected by the Secretary of HUD; (2) the amount is available for use by the CDC for at least 10 years;[196] (3) the contribution is to be used by the CDC to provide qualified low-income assistance[197] within its operational area; and (4) the CDC designates the contribution as eligible for the credit. The aggregate ****1032*802** amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $4 million.

Prior to July 1, 1994, the Secretary of HUD may select up to 10 CDCs as eligible to participate in the program (subject to the availability of eligible CDCs).[198] To be selected, a CDC must have the following characteristics: (1) it must be a tax-exempt charity described in section 501(c)(3) of the Code; (2) its principal purposes must include promoting employment and business opportunities for individuals who are residents of its operational area; and (3) its operational area must (a) meet the geographic limitations that would apply if the area were designated as an empowerment zone or enterprise community, (b) have an unemployment rate that is not less than the national average, and (c) have a median family income which does not exceed 80 percent of the median family income of residents within the jurisdiction of the local government.

The credit is subject to the general business credit limitations of section 38 and, therefore, may not be used to reduce tentative minimum tax.

EFFECTIVE DATE

The provision is effective on the date of enactment.

***803** IV. OTHER PROVISIONS

A. DISCLOSURE PROVISIONS

1. Access to tax information by the Department of Veterans Affairs (sec. 14401 of the bill and sec. 6103 of the Code)

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PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure to the Department of Veterans Affairs ("DVA") of self-employment tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the Code and in section 1137(c) of the Social Security ****1033** Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1997.

REASONS FOR CHANGE

The committee believes that it is appropriate to extend the authority to disclose tax information to DVA for an additional year to provide sufficient time to assess the impact of such disclosure on taxpayers' voluntary compliance with the tax laws.

EXPLANATION OF PROVISION

The bill extends the authority to disclose tax information to the DVA for one year, through September 30, 1998.

EFFECTIVE DATE

The provision applies after September 30, 1997.

***804** 2. Access to tax information by the Department of Education (sec. 14402 of the bill and sec. 6103 of the Code)

PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information except to the extent specifically authorized by the Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

The IRS may disclose to the Department of Education the mailing address of taxpayers who have defaulted on certain student loans. The Department of Education may in turn make this information available to its agents and to the holders of such loans (and their agents) for the purpose of locating the taxpayers and collecting the loan.

REASONS FOR CHANGE

The committee believes that the Department of Education should be provided with access to tax return information to assist it

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carrying out modifications of the Federal student loan program. One component of those modifications will permit students to elect to repay their loans on an income-contingent basis: the amount of each loan payment would be proportional to the former student's income.

****1034** The committee, however, is also concerned about the increasing number of requests for disclosure of confidential tax information for nontax purposes and the effect of such disclosure on voluntary taxpayer compliance. Accordingly, only the Department of Education and its employees have been given access to the tax return information necessary to implement income-contingent repayment and the access has been granted only temporarily. The committee also believes that any plan to involve further the IRS in loan collection should be thoroughly studied before implementing legislation is proposed.

EXPLANATION OF PROVISION

The bill gives the Department of Education access to certain tax return information in order to implement this direct student loan program. The only information the Department of Education is permitted to obtain is the name, address, taxpayer identification number, filing status, and adjusted gross income of the former student. Disclosure of this information may be made only to Department of Education employees and may only be used by these employees in establishing the appropriate income-contingent repayment amount for an applicable student loan. Applicable student loans are loans under the new direct student loan program and other student loans that are in default and have been assigned to the Department of Education. The Department of Education and its employees would ***805** be subject to the restrictions on unauthorized disclosure in present law. The committee anticipates that information will be provided by means of low-cost computer exchanges of information.

The bill also permits the Department of Education to obtain the mailing address of any taxpayer who owes an overpayment (i.e., has received more than the proper amount) on a Federal Pell Grant or who has defaulted on certain additional student loans administered by the Department of Education.

The bill requires the Treasury Department, in consultation with the Department of Education, to conduct a study of the feasibility of student loan repayment through wage withholding or other means involving the Internal Revenue Service. The study is to include an examination of (1) whether the IRS could conduct such a system of student loan repayment within its current resources and without impairing its ability to collect tax revenues, (2) the impact of increased disclosure of tax information on voluntary compliance with the tax laws, (3) the effect of such a system of student loan repayment on collections and repayment of such loans, and (4) the ability of the IRS to service student loans. The study must be submitted to the Congress within six months of the date of enactment. If the Treasury Department finds that the IRS's current resources are inadequate to permit the IRS to increase its involvement in student loan collection, then it should identify the amount of additional resources or appropriations needed.

The authority to disclose tax information to the Department of Education for purposes of establishing the direct student loan program expires on September 30, 1998.

****1035** The authority to permit the Department of Education to obtain the mailing address of any taxpayer who owes an overpayment on a Federal Pell Grant or who has defaulted on certain additional student loans administered by the Department of Education is permanent.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Access to tax information by the Department of Housing and Urban Development (sec. 14403 of the bill and sec. 6103 of the Code)

PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically

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authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

***806** REASONS FOR CHANGE

The committee believes that the Department of Housing and Urban Development (HUD) should be provided with access to certain items of tax information to assist HUD in determining eligibility for, and establishing correct benefit levels under, certain HUD programs.

The committee, however, is also concerned about the increasing number of requests for disclosure of confidential tax information for nontax purposes and the effect of such disclosure on voluntary taxpayer compliance. Accordingly, HUD's access to tax information has been granted only temporarily to provide the Treasury Department sufficient time to conduct a study on the effectiveness of such disclosure and HUD's compliance with safeguards contained in the Code.

EXPLANATION OF PROVISION

The bill permits disclosure of certain tax information with respect to applicants for, and participants in, certain HUD programs. Such disclosure may be made only to HUD employees and is to be used solely in verifying the taxpayer's eligibility for (or correct amount of benefits under) those HUD programs. The committee anticipates that information will be provided by means of low cost computer exchanges of information. The bill extends the current law restrictions on unauthorized disclosure to HUD and its employees. HUD employees may not redisclose tax information to State or local housing agencies, public housing authorities, or any other ****1036** third party. However, they may inform such parties of the fact that a discrepancy exists between the information provided by the applicant (or participant) and information provided by other sources.

The bill requires the Treasury Department, in consultation with HUD, to conduct a study to determine (1) whether the tax return information disclosed to HUD is being used effectively, (2) whether HUD is complying with the Code's safeguards against unauthorized disclosure of the information, and (3) the impact on the privacy rights of applicants and participants in HUD housing programs. The study must be submitted to the tax-writing committees before January 1, 1998.

EFFECTIVE DATE

The provision is effective on the date of enactment. The authority to disclose tax information to HUD under the bill expires after September 30, 1998.

B. USER FEE PROVISION

1. BATF user fees for processing applications for alcohol certificates of label approval (sec. 14411 of the bill)

PRESENT LAW

The Treasury Department's Bureau of Alcohol, Tobacco, and Firearms (BATF) is required to approve all alcoholic beverage labels and conduct various laboratory analyses to assure compliance with the Federal Alcohol Administration Act (27 U.S.C., Chapter 8) ***807** and Chapter 51 of the Internal Revenue Code. There is currently no charge or fee for these BATF services.

Under the Internal Revenue Code, annual alcohol occupational excise taxes are imposed as follows:

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These annual alcohol occupational tax rates are as enacted in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100–203, "1987 Act"), effective on January 1, 1988. The 1987 Act increased the wholesale and retail alcohol occupational taxes and imposed new occupational taxes on distilled spirits, wine and beer producers as well as for industrial users of distilled spirits.

****1037** REASONS FOR CHANGE

The committee considers it appropriate policy to permit the BATF to charge fees for the costs of processing of applications for certificates of alcohol label approval and formula reviews or laboratory tests and analyses performed under the Federal Alcohol Administration Act and the Internal Revenue Code and regulations. Such BATF services directly benefit the specific users.

EXPLANATION OF PROVISION

Under the bill, BATF user fees are established for the processing of applications for certificates of alcohol label approval (or exemptions therefrom) required by the Federal Alcohol Administration Act and formula (and statement of process) reviews or laboratory tests and analyses performed under that Act and the Internal Revenue Code and regulations.

The Secretary of the Treasury is authorized to implement the user fee program and to establish fee rates: not less than $50 for each application and not less than $250 for each formula (and statement of process) review or test and analysis. The fees charged under this program are to be determined so that the Secretary estimates that the aggregate of such fees received during any fiscal year will be $5 million. A maximum of $5 million of these fees are to be offsetting receipts deposited in the Treasury and ascribed to BATF's Compliance Alcohol Program.

***808** EFFECTIVE DATE

The provision is effective for applications filed and for formula (and statement of process) reviews or tests and analyses initiated 90 days from the date of enactment.

C. INCREASE IN STATUTORY LIMIT ON THE PUBLIC DEBT

(SEC. 14421 OF THE BILL)

PRESENT LAW

The statutory limit on the public debt currently is $4.370 trillion. It was set at this level temporarily in P.L. 103–12, enacted into law on April 6, 1993.

REASONS FOR CHANGE

The current debt limit will expire on October 1, 1993. At that time, the limit will revert to $4.145 trillion. At this level of borrowing authority, the Treasury will be unable to meet the government's financial commitments and to manage the Federal debt effectively.

****1038** In order to facilitate smooth functioning of government and to prevent any disruption of financial markets, the conference report on the concurrent resolution on the budget (House Report 103–48) includes reconciliation instructions to the Committee on Ways and Means to raise the statutory ceiling on the public debt.

EXPLANATION OF PROVISION

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The bill repeals the temporary limit that expires on October 1, 1993, and instead increases the statutory limit on the public debt to $4.9 trillion. The new limit has no expiration date.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. VACCINE PROVISIONS

1. Extension of the excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund; Provisions relating to the childhood vaccine immunization program (secs. 14431–14433 of the bill, secs. 4131, 4980B(f), and 9510 of the Code, and new sec. 9512 of the Code)

PRESENT LAW

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the ***809** State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

Under the Program, all persons who were immunized with a covered vaccine after the effective date of the Program, October 1, 1988, are prohibited from commencing a civil action in State court for vaccine-related damages unless they first file a petition with the United States Claims Court, where such petitions are assigned to a special master and governed by streamlined procedural rules designed to expedite the proceedings.[200] In these cases, the Federal Government is the respondent party in the proceedings, and the claimant generally must show only that certain medical conditions (or death) followed the administration of a covered vaccine and that the first onset of symptoms occurred within a prescribed time period.[201] Compensation under the Program generally is limited to actual and projected unreimbursed medical, rehabilitative, and custodial expenses, lost earnings, pain and suffering (or, in the event of death, a recovery for the estate) up to $250,000, and reasonable attorney's fees.[202] Only if the final settlement under the Program is rejected may the claimant proceed with a civil tort action in the appropriate State court, where recovery generally will be governed ****1039** by State tort law principles[203] , subject to certain limitations and specifications imposed by the National Childhood Vaccine Injury Act of 1986.[204]

The Vaccine Trust Fund is funded by a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). Prior to the expiration of the vaccine excise tax, the excise tax per dose was $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax expired after December 31, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

REASONS FOR CHANGE

To enhance compliance with the nation's childhood immunization efforts, the committee believes it is appropriate to extend permanently ***810** the vaccine excise taxes and the authority for compensation to be paid from the Vaccine Trust Fund for certain damages resulting from the administration of vaccines. In addition, the committee believes it is appropriate that the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, study the administration of the National Vaccine Injury Compensation Program and Vaccine Trust Fund to determine whether additional vaccines should be included in the Program or other modifications (such as adjustments to the excise tax rates) are warranted. The committee also believes it is appropriate to facilitate the financing of the childhood immunization program through the establishment of

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a new trust fund.

EXPLANATION OF PROVISIONS

Permanent extension of excise tax and Program funding

The bill permanently extends the excise taxes imposed on certain vaccines. Authorization for compensation to be paid from the Vaccine ****1040** Trust Fund under the National Vaccine Injury Compensation Program for certain damages resulting from vaccines administered after September 30, 1988, also is permanently extended.[205]

Study

The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to conduct a study of: (1) the estimated amount that will be paid from the Vaccine Trust Fund with respect to vaccines administered after September 30, 1988; (2) the rates of vaccine-related injury or death with respect to various types of vaccines; (3) new vaccines and immunization practices being developed or used for which amounts may be paid from the Vaccine Trust Fund; (4) whether additional vaccines should be included in the National Vaccine Injury Compensation Program; and (5) the appropriate treatment of vaccines produced by State governmental entities. Not later than one year after the date of enactment, the Secretary of the Treasury must submit a report detailing his findings to the House Committee on Ways and Means and the Senate Committee on Finance.

Childhood immunization program trust fund

The bill establishes a new Childhood Immunization Trust Fund ("Childhood Trust Fund") in the Internal Revenue Code. Monies in the Childhood Trust Fund are to be available, subject to appropriations Acts, for the childhood immunization entitlement program (under part A of subtitle 3 of title XXI of the Public Health Service Act), adopted by the Committee on Energy and Commerce as part of its reconciliation recommendations.

***811** Maintenance-of-effort requirement in childhood immunization program

The bill makes the failure of health plans that provide coverage for the cost of pediatric vaccines as of May 1, 1993, to continue to provide that coverage subject to the excise tax penalty (under sec. 4980B(f)) applicable to plans that fail to provide COBRA continuation coverage.

EFFECTIVE DATE

The extension of coverage under the National Vaccine Injury Compensation Program is effective for vaccines administered on or after October 1, 1992. The extension of the vaccine excise taxes is effective on the date of enactment, with a floor stocks tax imposed on vaccines purchased after December 31, 1992, that are being held for sale or use on the date of enactment.

****1041** The maintenance-of-effort requirement applies to plan years beginning after the date of enactment.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 16, 1993.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for Title XIV of the Reconciliation recommendations of the Committee on Ways and Means, to be transmitted to the House Committee on the

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Budget on May 17, 1993.

The estimates included in the attached table represent the 1994–1998 effects on the federal budget of the Committee's legislative proposals affecting revenues. CNO understands that the Committee on the Budget will be responsible for interpreting how revenues contained in these legislative proposals measure against the budget resolution reconciliation instructions.

The revenue estimates are based on a table transmitted to CBO by the Joint Committee on Taxation. That table is also enclosed.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Stell.

Sincerely,

Robert D. Reischauer,
Director.

Enclosure.

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TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1047*817** MINORITY VIEWS

President Clinton's economic program is based on two important stated goals–job creation and deficit reduction. As the first step, the President decided to push an unfinanced and poorly organized package of social spending increases. Disguised as a jobs program, the Administration first sent to Congress a pork barrel spending bill that now lies in shambles because the American people recognized it for what it was.

Now comes the second part of the Administration's agenda, the deficit reduction package. This reconciliation bill is the heart of that effort. Unfortunately, it relies on a massive tax increase in an attempt to stop the red ink. Yet, the deficit is not reduced and the nation's debts continue to pile up. The evidence is in the reconciliation bill itself. The Committee had to raise the statutory debt limit by nearly $800 billion just to get through the first half of fiscal year 1995.

REVENUE PROVISIONS

THE LARGEST TAX INCREASE IN HISTORY

At President Clinton's instigation, the Democrats on the Ways and Means Committee have adopted the largest tax increase in the country's history. This bill has $332 billion in tax increases, just during the next five years. Because of hidden increases to the tax rate on energy and other built-in inflationary increases, the tax increase will be even larger in later years, both in absolute terms and as a percentage of Gross Domestic Product (GDP).

What is even scarier is that this bill is only the first installment in President Clinton's tax increase agenda. A second huge revenue increase will come soon to finance health care reform. It is not surprising that the President has decided to listen to Congressional Democrats who have advised him to delay dropping the health tax bomb until after they have gotten the first megadose of taxes through the Congress.

EFFECT ON THE ECONOMY

Recent economic reports are unsettling. Many prominent economists say the prognosis for the economy is not good and lay the blame squarely on President Clinton's tax and health plans. The Administration has even conceded that the uncertainties caused by its tax and health plans have held back the economy's recovery, particularly in the willingness of employers to hire new workers.

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The tax package is filled with time bombs for the economy. For example, the tax rate increases are retroactive to the beginning of 1993 but no increased withholding or estimated tax will be paid until late this year or early next year. The impact on the economy ***818** of taxpayers having to find some $30 billion to pay these extra liabilities on top of their normal tax liabilities is likely to be quite heavy in the first and second quarters of calendar 1994. Another ****1048** time bomb is the scheduled energy tax rate increases; this provision will restrain the economy in 1998 and beyond.

REAL TAX INCREASES, PROMISES OF SPENDING CUTS

At the start of the year, OMB Director Panetta resolved to present a budget that would cut two dollars in spending for every dollar of new taxes raised. In its actions, the committee has now put into legislation an overwhelming reversal of that policy as proposed in the President's budget and adopted by the Congress, by raising over three dollars in taxes and fees for every dollar in spending reductions.

Whether the spending reductions will ever occur is open to question given previous congressional track records. Certainly the reconciliation bill does not indicate a push to cut spending. Of the $343 billion in reconciled reductions, a little less than $70 billion is not from higher taxes. Not only does the bill not cut spending sufficiently, it adds nearly $38 billion in new or expanded entitlement programs to the swollen federal budget.

WORKING IN SECRET

Over the unanimous objection of the Republican members of the Committee, Committee Democrats voted to exclude the public and the news media from the markup. When they came to the revenue title, the Democrats even excluded the Republican members of the Committee from deliberation of the tax provisions.

When the tax title was ultimately presented to the full Committee, the amendment process was limited to 45 minutes, and only seven of 26 Republican amendments were permitted to be offered.

Had the public been permitted to attend the markup, either individually or through the media, they would have seen Democrats, as a group, vote: to keep the Clinton energy tax which falls most heavily on the poor and middle-class, to keep the tax increase on social security benefits received by the elderly and disabled; to raid the social security trust fund to pay for new spending; and to defeat Republican attempts to provide a tax incentive to help self-employed persons acquire health insurance.

The Clinton Administration and the Ways and Means Democrats have consistently waited until the very last minute to reveal the exact details of their tax proposals–and with good reason. Hidden among these proposals are an incredible number of new tax increases, provisions to further complicate the lives of honest taxpayers, and attempts by the Administration to grab the power to change tax laws while denying citizens the protection of public Congressional consideration.

MULTIPLE NEW TAX RATE BRACKETS

The Administration has finally admitted that President Clinton is proposing to add two new regular individual income tax rate brackets to the tax Code, the 36% rate and the 39.6% rate. Gone is the pretense that the so-called "surtax" for "millionaires" is anything ****1049*819** other than another rate bracket (with "millionaires" defined as those earning more than $250,000). The rate increases in the proposed statute remain retroactive to the beginning of this year.

The Clinton package also has several hidden rate bracket increases: the permanent personal exemption phaseout (approximately ¾% rate increase per exemption claimed on the return); the permanent limitation on itemized deductions (approximately 1% rate increase); the removal of the cap on wages subject to the health insurance tax (approximately 3% rate increase for self-employed persons and 1.5% for employees). These rate increases, both overt and hidden, will have the heaviest impact on small businesses and family farms–the biggest job creators in America.

The saddest thing about all of these tax rate increases for individuals is that in the long run they will produce little or no

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revenue for the federal government. According to Martin Feldstein and other respected economists, the tax rate increases will cause people to adjust their behavior by working less, deferring income, buying tax-free investments, substituting tax-free fringe benefits for taxable wages, and purchasing tax shelters. The rate increases will merely undo all of the better aspects of the 1986 tax reform and distort the economy.

As if the tax rate situation isn't bad enough, the individual alternative minimum tax will now go from one rate bracket to two and another bracket will be added to the corporate income tax. Corporations will also have to pay in their taxes under ever more strict estimated tax rules or risk incurring significant penalties.

To punish savings and add to the difficulties of small, family-owned business, the President has proposed to increase estate tax rates.

COMPREHENSIVE ENERGY TAX ON MIDDLE-INCOME TAXPAYERS

In lieu of the middle-income tax cut promised during the campaign, President Clinton has proposed a massive middle-income tax increase, the impact of which his officials worked mightily to hide.

The economic impact of the Clinton energy tax is especially disturbing. According to several studies, the tax will cost the U.S. economy at least half a million jobs by 1998, and it will lower economic growth by $35–50 billion each year. President Clinton's energy tax will raise the cost of practically every good and service that Americans produce, forcing consumers to pay more and making American workers and companies less competitive in the world market. Moreover, in an attempt to mute the outcries of particular industries and regions, the Administration has cut deals for selected partial exemptions from the tax–causing a 4.3% increase in the tax paid by all who are hit by it. Those who were not accommodated with special exemptions should be outraged.

There is no question who will bear the brunt of Clinton's energy tax: the middle class. The Clinton Administration intends to insulate lower-income individuals from the tax through increased spending programs. Indeed, these so-called low-income offsets eat up over one-half of the expected revenue from the tax, forcing middle-income families to pay an excessive share of the Administration's $71 billion goal. Once again, the middle class is left holding the bag. Yet, in this case, because most of the cost of the energy ****1050*820** tax will be hidden from consumers, the middle class will have only the foggiest notion of the size bag it is left holding.

Middle income Americans will pay the tax not only on the gasoline they put in their cars and the electricity, natural gas, or heating oil they use in their homes. They will pay additional taxes on hidden energy costs in every single product they buy that is manufactured in this country.

Most families cannot afford the nearly $500 a year the Clinton energy tax will cost them. Certainly that is true of those 600,000 to a million people who will lose their jobs when the energy tax forces their factories to close and move overseas where energy taxes like this do not exist. Especially vulnerable are jobs in basic manufacturing–like energy production itself, and energy intensive industries like steel, aluminum, cement, glass, paper, plastics, agriculture, chemicals and transportation.

Republicans unanimously supported amendments to delete the energy tax, to exclude energy used in the production of energy, and to reduce the impact of the energy tax on health care costs. Unfortunately, these amendments were defeated on straight party-line votes.

SOCIAL SECURITY TAX INCREASES TARGET THE ELDERLY

The President persists in arguing that his near doubling of income taxes on social security benefits is not a tax. That pretense simply is not credible. The President's proposal would increase taxes for nearly 10 million social security recipients whose only "crime" is that they saved for their old age. That number will rise to nearly 14 million by 1998 and increase every year after that. In fact, the number of seniors subject to the tax could double in just a few years. Under current law, the increased revenues would go to the Old Age Survivors and Disability Insurance trust fund but the Administration proposed to put the increases into the troubled Hospital Insurance trust fund. Instead the Committee transferred the extra monies into the general

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revenue. Those revenues would be squandered to fund the rest of the government without even an IOU to the social security trust fund. Social security beneficiaries will also bear, perhaps disproportionately, the impact of the Clinton middle-income energy tax. And, as if the hit to social security beneficiaries weren't unfair enough, press reports suggest that beneficiaries could see significant changes to medicare as part of President Clinton's health reform proposals.

Republicans unanimously supported amendments to delete the tax increase on social security benefits and to insure that all income taxes on social security benefits would, at the very least, go to the social security trust fund. These amendments were defeated on a straight party-line vote.

OTHER BAD IDEAS TO INCREASE TAXES

The Clinton proposal, as adopted by the Committee, will jeopardize many thousands of jobs in the restaurant and public entertainment industries by reducing the deductibility of legitimate business expenses for meals and entertainment from 80% to 50%. Republicans unanimously supported an amendment to ameliorate the impact ****1051*821** on restaurants by providing a tax credit for FICA taxes paid on tips, but the amendment was defeated on a straight party-line vote.

The Committee's inclusion of President Clinton's proposal to reduce the limit on contributions to pension plans will have the inevitable impact of reducing retirement savings for Americans. Many companies are likely to view the new rules as creating impediments to continuing existing plans or starting new ones.

We are also alarmed about the Committee's decision to impose a 250% tax increase on commercial navigation using our inland waterways. The additional $.50 a gallon fuel tax translates into a $2,500 a day increase for the average towing vessel. A tax of this magnitude will surely have an adverse ripple effect on agriculture and other industries dependent on waterborne transportation. In our opinion this is an example of economic policy run aground. Republicans unanimously supported an amendment to eliminate the tax increase on waterways fuel, but were defeated on a straight party-line vote.

Our enumeration of bad ideas for tax increases contained in the Committee's bill is not exhaustive. The bill contains over 40 different tax-increasing changes.

EXPANDED EARNED INCOME TAX CREDIT ENTITLEMENT

Although a number of Republicans support the concept of wage subsidies through the tax system for low-income families with children, we must question the huge increase for the Earned Income Tax Credit (EITC) in the Administration's proposal–ostensibly to offset the impact of the Clinton energy tax. The EITC was substantially increased in both 1986 and 1990. And yet we have no empirical research on whether these multi-billion dollar increases have actually increased either work effort or family income.

The Human Resources Subcommittee received testimony in a hearing last month that the credit may actually have a work reduction effect in the phaseout range, and that the Administration proposal may boost this effect by expanding the phaseout range. According to the witness, a labor economist at the American Enterprise Institute, there could be as many as 15 workers in the phaseout range of roughly $17,000 to $30,000 for every worker in the phasein range of $0 to $6,000.

The importance of considering worker response in the phaseout range is demonstrated by a recent study by the Congressional Research Service showing that marginal tax rates in the phaseout range reach more than 70 percent. Virtually confiscatory tax rates of this sort could cripple work incentive. Thus, the Administration's proposal could have the ironic effect of reducing work by subsidizing wages. It is folly to spend $28 billion over 5 years on a policy that may not have its intended effect, especially in a budget supposedly focused on deficit reduction.

ENDLESS COMPLEXITY

The Clinton package adds several new provisions to the tax code that will cause no end of frustration to taxpayers. These provisions are hopelessly complex, both in theory and in application.

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****1052*822** For example, capital gains are singled out for an enormous complexity penalty. A whole new category of income which qualifies as capital gain under current law will be treated as ordinary income. This category represents income from ill-defined "conversion" transactions. While the statute provides a list of some "conversion" transactions, the most important point is that it lets the Treasury add whatever it wants to add later, even retroactively. Seventy-five years of settled tax law on the treatment of capital asset sales will be thrown out the window. As a concession to criticism that the provision had never been mentioned by the Administration, the Committee moved the effective date to April 30, 1993. Shouldn't a provision this complex require some Congressional hearings before it is adopted?

The area of U.S. taxation of international operations, already written off by most knowledgeable persons as a disaster, would be made significantly worse. U.S. corporations will be shackled with additional burdens, virtually assuring that they will fall behind in international competitiveness. Income of foreign subsidiaries earned in prior years and not repatriated to the United States will, in many cases, be subject to immediate taxation in what can only be called a retroactive tax change. Companies which have made major investments in U.S. possessions in reliance on current tax provisions will see those investments become economically decimated. Other new complexities added to the international area include revenue-seeking adjustments to the foreign tax credit rules for oil and gas and shipping income and changes related to the deduction of interest on borrowings from related parties. Despite overwhelming concerns expressed by hundreds of companies, the Committee's bill provides no significant amelioration of the Administration's proposals.

Fortunately, the President was forced to withdraw some of his proposals to complicate the tax laws. The ill-conceived investment tax credit which required over 35 statutory pages, would have generated millions of dollars in accounting costs, and would have resulted in years of litigation, all for dubious benefits, was withdrawn after everyone but the President's advisors said it had to go. Over the objection of those same advisors, the President removed his proposal to punish leading-edge companies which receive international income from their innovation in the form of royalties.

CEDING TAX POLICY TO TREASURY REGULATORS

In the first 100 days of the Clinton administration, virtually no regulatory or administrative guidance was issued by the Treasury, even on routine tax matters. The prognosis for the next several months is no better. Despite this problem in issuing needed guidance, the Clinton Treasury has sought for itself a breathtaking role in providing guidance (and in many cases the implementing details) for the Clinton tax proposals.

In the middle-income energy tax, the Treasury has reserved for itself the power to unilaterally change the tax rate on various energy products, the power to expand or contract the list of products subject to tax, and the power to exempt certain taxpayers from the tax. In the area of financial transactions, the Treasury seeks the power to retroactively recharacterize certain capital gains into ordinary ****1053*823** income transactions, and to recharacterize certain transactions as "conduit" transactions where such characterization would be "appropriate to prevent the avoidance of any tax." About the only consolation a taxpayer might get is that expenses to lobby the Treasury concerning the exercises of its regulatory powers would remain fully deductible. Expenses to lobby the Congress to undo the mess created by the Clinton Administration would be non-deductible!

HUMAN RESOURCES PROVISIONS

The Human Resources provisions of the Committee bill raise taxes, spend too much money, continue the Committee's long-term agenda of infiltrating the federal budget with more and more entitlement programs, and pass up several opportunities to improve government services.

We applaud and strongly support the half-dozen Human Resources provisions that produce budget savings. Taken together, these provisions save more than $1.2 billion over 5 years.

But the majority bill also increases spending in more than 20 programs and creates one entirely new entitlement program. These spending provisions will cost almost $1.9 billion over 5 years. When the cuts and new spending are combined, they increase the deficit by about $.7 billion over 5 years. So to cover this loss, the majority looked into the Democrats' bag of

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tricks and pulled out their favorite weapon: tax increases.

A NEEDLESS INCREASE OF FUTA TAXES

This instinctive approach by the majority is perfectly illustrated by their decision, made with advice from the Administration, to slip the extension of the Federal Unemployment (FUTA) surtax into their package the night before it was first marked-up. Created originally as a temporary surtax to shore up unemployment funding shortfalls in the 1970s, the FUTA surtax has achieved permanent status as a "temporary" tax. Now the majority wants to extend the tax again because, they claim, the revenues are needed to meet future shortfalls in the unemployment trust funds. Yet the Administration's own estimates show that the unemployment trust funds, without any tax increases, will have a surplus of $13.5 billion in 1997 and $14.6 billion in 1998–the two years for which the surtax is extended.

There is no justification related to unemployment insurance for extending the FUTA tax at this time. The only clear employment effect of the tax is to kill jobs. Why then is this tax being extended? The answer is simple: to pay for new Human Resources spending called for in the Committee bill. Thus, the minority's amendment to strike the tax was defeated on another straight party-line vote.

CREATION OF A NEW ENTITLEMENT PROGRAM

Most budget experts agree that the major cause of rising deficits is the unchecked growth of entitlement programs. Nonetheless, the Committee bill creates yet another entitlement program, this one for child welfare–despite the fact that there are already six open-ended entitlement programs devoted to child welfare. These programs ****1054*824** have been among the most rapidly growing in the entire federal budget. Between 1981 and 1992, spending on these entitlements grew from $474 million to $2.5 billion, an increase of over 400 percent. Republicans offered an amendment to allow states more flexibility in how these rapidly growing resources are used, thereby reducing or eliminating the need for yet another entitlement, but the amendment was rejected on a straight party-line vote.

The Administration claimed that its support of this new entitlement program demonstrates its commitment to good government because the program will lapse after 5 years unless reauthorized by the Congress. What they do not point out is that under the terms of the Budget Act of 1990, funding for the program in the years after 1998 will be assumed in the CBO baseline. Thus, Congress will be able to renew the program in 1998 without the need to pay for its spending. This is precisely the type of budgeting that has contributed to our current deficit mess.

FAILURE TO REFORM SOCIAL PROGRAMS

In addition to honoring its tax and spend tradition, the majority resisted several opportunities to improve the way government services are delivered to citizens. The Administration's approach to immunizing children against childhood disease is a clear example. Despite good evidence that the availability of free vaccines does not significantly improve immunization rates, the President proposed buying vaccines for all Medicaid and uninsured children–at a cost of over $2 billion for 5 years.

To complement this program, Republicans offered an amendment that would require parents on welfare to get their children immunized. The amendment would have given the states the option of using financial rewards or penalties to encourage parents to immunize their children. This amendment fit the President's call for "reinventing" government by providing states with both the funds and the flexibility to achieve an important social goal. Nonetheless, the majority rejected the amendment on another straight party-line vote.

They also opposed putting additional work incentives in the Aid to Families with Dependent Children (AFDC) program. Republicans proposed allowing AFDC recipients who start a small business to accumulate a higher level of assets in these businesses before they lose AFDC eligibility. These small businesses have proven to be an effective method for helping AFDC recipients, many of them women, get off welfare by starting small businesses. Expanding the asset limit would allow these enterprising mothers to create their own safety net by building equity in the fledgling business while they are still receiving AFDC benefits. The majority supported this program in subcommittee, but then changed their position to one of

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"let's wait for the President's welfare reform bill" in full committee.

The majority also felt the need to protect state bureaucracies from helping unemployed citizens avoid unexpected tax bills. Under current law, unemployment benefits are subject to federal income tax but not withholding. Responding to the concerns of unemployed citizens that found themselves liable for federal taxes at precisely ****1055*825** the time they could least afford them, Republicans offered an amendment to require states to withhold income taxes from unemployment benefits if requested to do so by the taxpayer. The majority response was that this amendment was designed to help "the rich" since only people with other income besides unemployment benefits would wind up paying taxes at the end of the year. Apparently, the majority's definition of rich now includes married couples with an unemployed spouse. In any case, this straightforward means of improving government services was rejected.

HEALTH CARE PROVISIONS

MEDICARE PAYMENT FREEZE

The health care provisions of the Committee bill essentially consist of a two-year freeze on Medicare provider payments. This freeze was concocted as an "easy" method for meeting the arbitrary spending reduction target. The harmful effects of the freeze were ignored, as was the need to make meaningful policy changes in the Medicare program. The Republican members offered several amendments designed to improve Medicare's Health Maintenance Organizations and Preferred Provider Organizations program. Unfortunately, these amendments were defeated on a party-line vote.

The freeze is a poor proposal which disproportionately reduces reimbursement to hospitals–the savings from hospitals make up $28 billion of the $48 billion target–and will especially hurt rural, Medicare-dependent hospitals. During the markup we offered an amendment that provided relief for urban and rural hospitals with exceptionally high Medicare utilization. Again, this was defeated on a party-line vote. Neither the Committee nor the Health Subcommittee held hearings on the freeze proposal, nor was the freeze recommended by the Physician Payment Review Commission or the Prospective Payment Assessment Commission. Once again, arbitrarily ratcheting down payments to providers is bad policy, and we strongly oppose the freeze proposal.

PHYSICIAN SELF-REFERRAL BAN

The health care provisions are made worse by the ill-conceived expansion of the physician ownership and referral ban. The current ban on Medicare reimbursement for clinical lab referrals by physicians who hold an interest in the lab has proven so difficult to implement that the Health Care Financing Administration has yet to publish final regulations, nearly four years after the ban was legislated. Now, based upon anecdotal evidence and the extrapolation of limited studies, the Committee has added an additional fourteen specific services to the ban, none of which have been empirically or even casually linked to an ownership/self-referral problem.

Furthermore, the bill expands the current prohibition to payors outside of the Medicare program and well outside the Committee's jurisdiction. The Committee has not fully considered the effects the expanded, all-payor ban will have on physicians, the availability and quality of these services, or the impact on those Americans who use the listed services. It is certain that the ban will impede the growth of efficient provider networks and stifle the cooperative ****1056*826** spirit among providers which is necessary to ensure that all Americans have access to quality, affordable health care. Republican members offered an amendment that provided the needed improvements to existing law and avoided the needless expansion of the ban to areas well outside the Medicare program. But the amendment was rejected on a party-line vote.

We believe that in an attempt to address the problem of overutilization, the Committee has greatly expanded the physician self-referral ban. This misguided "solution" will almost certainly require untold hours of work on the part of the Committee in the future to resolve the problems the ban expansion will create.

NEW CHILDHOOD IMMUNIZATION PROGRAM

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Of additional concern is the more than $2 billion revenue loss associated with the President's childhood immunization initiative. The Committee established a trust fund in the revenue section of the bill to finance a relatively unfocused and poorly thought out childhood public health activity.

While the Committee has held no hearings on this issue, nor had any hand in drafting or designing the proposal, it has been asked to bear the costs. While the majority claims to be funding the immunization plan through taxes, oddly enough the Medicare cuts in the bill are $2.1 billion greater than originally requested, raising the question of whether Medicare beneficiaries and providers are really covering the program's costs.

***827** IN CONCLUSION

President Clinton's approach to economic policy and deficit reduction raises over four dollars in new taxes for every dollar in spending cuts. What is particularly troublesome is that the tax increases are real and take effect immediately–in many cases retroactively to January 1st of this year–but no net spending cuts whatsoever will occur in the first two years. Past experience tells us that spending cuts promised in the future simply will not happen.

The American people are clear in their message. Cut spending first. President Clinton wants to tax people first, and this product of the Ways and Means Committee's majority helps him do just that.

The American people are not taxed too little. The government spends too much. That is why we have a huge budget deficit–and why Republicans will continue to press for deficit reduction through specific spending cuts, not tax increases.

Bill Archer.
Phil Crane.
Bill Thomas.
E. Clay Shaw, Jr.
Don Sundquist.
Nancy L. Johnson.
Jim Bunning.
****1057** Fred Grandy.
Amo Houghton.
Wally Herger.
Jim McCrery.
Mel Hancock.
Rick Santorum.
Dave Camp.

***828** DISSENTING VIEWS SUBMITTED BY MRS. KENNELLY

I would like to express my concern regarding Part 3, section 5111 of the Energy and Commerce Committee's Medicaid reconciliation provisions. This provision would prohibit states from implementing public/private long term care partnerships programs such as the one which is ongoing in my home state of Connecticut, as well as in California, Indiana, and New York under the auspices of the Robert Wood Johnson Foundation. The policies sold under these programs must meet rigid consumer standards, and in addition to asset protection offer home care benefits and nursing home coverage.

The partnership programs have received National attention and are being used as models for other states. Seven other states have passed legislation to implement similar programs and 10 other states have legislation pending. Section 5111 would prevent these states from moving forward with these programs; denying them a feasible option that can help stem the rapidly growing expenditures which result from the Medicaid expenditures related to long term care.

These programs are a public/private alliance between state government and private insurance which enables individuals to take some responsibility for their own long term care needs. They are designed to allow people to buy some private insurance and to then protect a certain amount of assets once the insurance benefits have been used and still qualify for Medicaid. It is important to note that these programs do not create a loopholes for wealthy individuals to qualify for Medicaid. These

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partnerships are intended to provide a means for individuals with moderate means and moderate assets to take financial responsibility for their long term care needs while eliminating the concern that a long term illness would leave them completely impoverished.

Long term care partnerships also provide people with an alternative from transferring or protecting assets, known as "estate planning". Estate planning enables individuals to become eligible for Medicaid by bypassing the statutory requirements to "spend down" to a certain level of assets before legitimately becoming eligible for Medicaid long term coverage. This is a loophole for the wealthy which must be addressed.

As we consider health care reform, a major issue is how to provide for people who need long term care. The Long Term Care partnership is a possible approach to address the long term care financing crisis. This is an issue that has been given consideration by the Administration's Health Care Task force, and it would be unwise ****1058** to stifle these programs when they could be a valuable means of cost control for Medicaid.

Barbara B. Kennelly.

***829** DISSENTING VIEWS OF REPRESENTATIVE BILL ORTON

Following twelve years of budget policies that have more than quadrupled the national debt, Congress and the President are now confronted with the formidable task of enacting the biggest deficit cuts in history in a way that is fair to all Americans.

Under President Clinton's leadership, this budget reconciliation bill takes some steps in the right direction. In general, I support the program. It starts an absolute freeze in discretionary spending. It makes some real cuts in spending programs. It requires the government to be reimbursed for some services. It tightens up the administration of certain programs, such as third party collections for Medicaid recipients. It closes some loopholes, such as physician referrals. And it raises significant amounts of additional revenues from wealthy taxpayers.

Other features of this bill, however, render it so ineffective and unfair that it cannot gain my support without significant revision. To illustrate, one must look at what effective deficit reduction entails.

In my view, no deficit reduction effort can succeed unless it:

(1) Freezes discretionary spending. Congress must at least get a handle on the spending over which it has some control. Otherwise, there is little hope for controlling other parts of the budget. Nor can Congress hope to gain support for any new taxes to finance deficit reduction if it cannot spend the taxpayers' money wisely.

(2) Places limits on the uncontrolled growth of mandatory spending. This is the spending that goes toward entitlement programs and obligatory items such as interest on the public debt. It is the largest and fastest growing part of the budget. Over the past twelve years, mandatory spending has consistently exceeded the government forecasts upon which budget planning is based. It would be impossible to reduce the deficit, or even plan to reduce the deficit, without tighter controls on mandatory spending, including measures to bring spending down to the levels of the forecasts.

(3) Raises taxes, if taxes are necessary at all, in ways that do not impair specific areas of the country or specific industry sectors. Industry-specific taxes are not only unfair, but given the magnitude of the deficit they are likely to be too large to merit political or common sense support. Tax increases on the middle class should be the last resort and only after spending cuts are in place.

(4) Provides a reliable enforcement mechanism. Again, politics and common sense suggest that any plan requiring substantial sacrifices from the American people meet the expectations we have of it. This can be assured only if we have in place the enforcement mechanisms to bring spending back into line when it runs ahead of the forecasts.

How does the current bill measure up?

****1059*830** DISCRETIONARY SPENDING

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I applaud the successful efforts of the Budget Committee in its resolution for fiscal year 1994 to freeze discretionary spending. Such a move is a first in budget planning and sets a helpful precedent for making future budget choices.

This bill, however, contains no controls on mandatory spending. Nor does it raise taxes in an equitable manner. Finally, it contains insufficient enforcement to assure Americans that the ambitious budget targets will be met.

MANDATORY SPENDING

A quick look at the numbers shows how important this sector is. It already consumes more than one half of the totals. It is growing both in absolute terms and as a percentage of the budget. And yet we seem helpless to bring it under control.

Medicare and Medicaid provide dramatic examples of why we must act. At the time of the 1990 Budget Agreement the Congressional Budget Office forecast Medicare and Medicaid outlays for the following five years, 1991 through 1995. Last March, only two and one half years later, CBO looked at the record for 1991 and 1992, and revised its forecasts for the out-years. It found Medicare and Medicaid spending alone to exceed the original forecasts by a total of $155 billion. Lest some argue that forecasts are inherently risky because of changes in economic conditions, the same CBO figures show that economic conditions are not the cause of the $155 billion gap; such conditions alone actually made the figure smaller. The real culprit is our inability to impose reasonable curbs on the system. This is precisely the kind of spending that needs to be brought under control.

This much, then, is patently clear: a budget plan that leaves mandatory spending open-ended is no budget plan at all. It is simply a set of numbers with no other basis to go on than wishful thinking.

This bill contains approximately $97 billion in mandatory spending cuts over five years. This is a good start, but if $155 billion is closer to the measure of our shortcomings, this good start is not enough. I support efforts to enact controls to bring such spending down to the planned level or to make corresponding cuts elsewhere.

TAX CHANGES

The tax portion of this bill presents additional problems. I regret that the President chose an energy tax to be the second largest revenue producer in the tax package. Simply calling the BTU tax broad-based does not make it so. Such a tax places an unfair burden on large energy consuming states such as the New England states, and large energy producing ones such my own state of Utah.

In my view, the energy tax is unnecessary. Dropping the tax could be financed through cutbacks in measures designed to help low income persons pay their share of the energy tax, plus modest cutbacks in other programs. Spending cuts like these must come before tax increases. If, after feeling the effects of spending cuts, Americans want to raise taxes to solve the deficit problems, then tax hikes will be easier to enact–and fairer, too.

****1060*831** BUDGET ENFORCEMENT

The reconciliation bill misses an excellent opportunity to combine budget cutbacks with budget enforcement. Many of the proposals for changes in budget rules would go a long way toward gaining control of the budget numbers. Entitlement caps, discretionary spending caps and a deficit reduction trust fund all represent improvements over the present system: a system that forces us to lurch from one crisis to another, leaving the American taxpayer shortchanged.

In sum, this bill is a modest start where a hard-charging one is needed. Without controls on mandatory spending this bill will get us little closer to a balanced budget than where we are today. With a large BTU tax that hits the country unevenly, the bill will penalize some Americans just because they happen to live in certain parts of the country. And without a reliable enforcement mechanism, the optimistic expectations of budget planners could evaporate in the harsh glare of reality.

William H. Orton.

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***832** ADDITIONAL VIEWS TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993

Through we acknowledge the Herculean effort of the authorizing committees in bringing the required savings to the table in such a short time period, we are concerned that in this process we have quickly passed over some major policy decisions which deserved more serious debate. One important example of this problem is the case of direct lending in the student loan program.

Within this reconciliation bill is language which will, over the next five years, disassemble an existing public/private partnership–the guaranteed student loan program–and replace it with a direct government lending program. In the process, we will increase our national debt by over $50 billion, add serious financial oversight responsibilities to an already overburdened Department of Education, expand the federal bureaucracy, and come to expect (and count on) estimated savings which many critics allege may never appear.

The question of direct lending was given full and serious consideration by the House Education and Labor Committee last session as part of the reauthorization of the Higher Education Act. The decision of the House at that time was to set up a direct lending pilot program, giving the Congress and the education community a chance to observe the strengths and weaknesses of the direct lending concept.

Many of us believe that waiting for the results of this pilot program is still the wisest course to follow in the near term. The fact is that there are alternative ways to find the required savings, specifically by squeezing out excess profits from the existing system. Following this path would provide immediate savings, would protect us from further growth in the federal bureaucracy, and would ensure that students continue to receive the loan funds they need ****1061** when they need them. We are disappointed that the structure we have created in the House did not allow us the opportunity to give this option more serious consideration.

Bart Gordon.
Anthony Beilenson.
William H. Orton.
Charlie Stenholm.
Louise Slaughter.
Harry Johnston.
Earl Pomeroy.
Jerry F. Costello.
Glen Browder.
Mike Parker.
John R. Kasich.
Alex McMillan.
Jim Kolbe.
***833** Olympia Snowe.
Wally Herger.
Lamar Smith.
Chris Cox.
Wayne Allard.
Dave Hobson.
Dan Miller.
Rick A. Lazio.
Bob Franks.
Bob Inglis.

***834** ADDITIONAL VIEWS SUBMITTED BY REPRESENTATIVE JERRY F. COSTELLO

I strongly support efforts to bring our fiscal problems under control, as intended by several provisions in the Omnibus Budget Reconciliation Act. I also support the President’s call to change and applaud the action he has taken in an attempt to enact a $500 billion deficit reduction plan that is balanced between spending cuts and revenue increases to make critical investments in our economy. The reconciliation bill requires savings in every major entitlement program and raises significant revenues,

75 percent of which come from the 6 percent of taxpayers with more than $100,000 of income.

However, what I continue to hear from my constituents, is that more spending cuts are needed. I also hear that people are willing to pay more, but the sacrifice should be equally distributed. Those who can afford to pay more should help shoulder the burden of bringing our fiscal house in order. We cannot let our children and grandchildren inherit the consequences of years of fiscal irresponsibility.

Under House rules, no amendments are allowed in the Budget Committee to make substantial changes to the reconciliation bill. ****1062** However, additional options for savings and revenue need to be addressed.

According to CBO estimates, an additional $17.5 billion in savings could be achieved by increasing the basic premium for physician services under Medicare for wealthy seniors. Granted the opportunity, I would have offered an amendment to increase Medicare premiums for the wealthy to offset the elimination of the inland waterways tax and reduce the rate of the energy tax. The 50 cent barge tax, while infinitely better than the one dollar tax proposed by the President, may still have dire consequences to the Illinois agriculture and coal industry, and other industries that use or operate barge transportation.

Further, my proposal would have applied the $17 billion in savings from the Medicare proposal to reduce proportionately the rates of energy incurred from the Btu tax. This would cut nearly ¼ off the base rate at which energy is taxed. An increase in Medicare premiums is a fair way to cut entitlements to reduce spending by putting the burden on the wealthy while easing the tax burden caused by the energy tax on middle-income Americans.

While I believe that this reconciliation bill is a step in the right direction, I remain convinced that further acted is needed to keep our commitment to the people.

Jerry F. Costello.

***835** SEPARATE VIEWS OF MR. ALLARD INCORPORATING THE MINORITY VIEWS OF ALL OF THE REPUBLICAN MEMBERS OF THE COMMITTEE ON AGRICULTURE–TITLE I

My Separate Views on the Omnibus Budget Reconciliation Act of 1993 relate to title I and are more specifically set forth in the Minority Views of the Republican Members of the Committee on Agriculture that are incorporated herein as set forth in the following.

Wayne Allard.

****1063*836** MINORITY VIEWS ON TITLE I OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993

The final reconciliation package passed by the Committee on Agriculture cuts $2.95 billion from the USDA Budget jeopardizing farm income over the next five years. This contribution to deficit reduction is on top of the $57 billion in cuts surrendered by agriculture over the past decade.

At the same time, following the President's budget blue print, the Agriculture Committee action increases spending on food stamps by $7.3 billion over the same five-year period. This increase comes despite an OMB spending baseline that projects food stamp spending increasing from $25 billion to $28 billion by 1998. Baseline estimates include provision for cost of living increases and newly eligible recipients. If the $7.3 billion increase was eliminated, not a single person now eligible or expected to become eligible would lose a single dollar in food stamp benefits. This is simply an expansion of the program, supposedly to offset the effect of the BTU tax.

The Agriculture Committee, voting on party lines, defeated amendments to block the food stamp increase and to eliminate the need for cuts to farmers by offsetting them against food stamp increases.

Nearly $2 billion of the farm program cuts comes from reducing the number of acres on which a farmer can receive deficiency payments by 5 percent beginning in 1994. This increase in the so-called "unpaid flex" acres would be added to the 15 percent unpaid acres instituted to make savings in 1990. In addition to the 20 percent unpaid flex, farmers will be required to set-aside acres from production to qualify for entry into the farm programs. In 1994, for example, corn will have a

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set-aside of 10 percent plus a further 20 percent of unsupported acres. For wheat there will be a 5 percent set-aside plus the 20 percent unpaid flex acres.

The cuts adopted by the Agriculture Committee will be crippling to a farm economy that is already suffering from weak grain and commodity prices, but the devastation of agriculture does not end there. Among the $240 billion in net additional taxes contained in the reconciliation bill are two taxes that will destroy the economic base of thousands of farms; the increase in the inland waterways fuel tax and the BTU energy tax.

The Ways and Means Committee announced a major concession to barge users [40% of all grain moves by barge] by cutting the proposed increase in half. While this may sound like progress, it still means that there will be a 250% increase in the tax on barge fuel. This increase will subtract five cents from the bushel-price for a farmer who ships his grain down the Mississippi River. A medium-size corn farmer in Illinois who ships half his crop for export could expect to lose $2,000 from the price of his corn.

****1064*837** The President's BTU tax is the really big hit on farmers, and again the House Ways and Means Committee claims to have given an "exemption" to agriculture. In fact, the "exemption" is only a slight reduction of an unfair and disproportionate tax. Energy is the basis of all production and is used to increase efficiencies and reduce manpower needs. Nowhere has this been more true than in agriculture, perhaps the most productive sector of our economy. The BTU tax will be levied on all the gasoline, diesel, natural gas and electrical energy used by farmers.

In the proposed BTU tax petroleum-based energy will be taxed at a higher penalty rate. The Ways and Means Committee amended the President's plan to allow farmers to pay gasoline and diesel BTU assessments at the lower non-petroleum rate for on-farm uses. How useful is this "exemption" for farmers? In the aggregate they will still pay $600 to $1 billion annually in BTU taxes. Individual taxes will vary according to region, size and specific crop, but farmers can expect to pay from $1,000 to $4,000 each year in additional taxes attributable to the BTU tax. To offset the revenue loss from granting this minor relief to farmers, the much acclaimed exemption of ethanol from the BTU tax was stricken, denying this farm-based fuel a greater opportunity to crack the vehicle fuels market.

The absurd nature of the BTU tax is illustrated by the convoluted budget structure of the proposal. The BTU tax is expected to bring in $70.5 billion over five years. However, in order to offset the burden of this energy tax on the poor, spending was increased in several federal programs: $7.3 billion in food stamps, $28.3 billion for the Earned Income Tax Credit, $4 billion for low income energy assistance.

As a result the government will have to spend nearly $40 billion to offset the harm done by the $70 billion in new taxes, while imposing an unfair and unequal burden on energy intensive industries like agriculture. First, Congress creates the BTU tax, then its effects are offset with major spending increases like food stamps; and then farmers are asked to pay for the increased food stamps by cutting their programs. Farmers get it coming and going.

Farmers have indicated their willingness to make contributions to reducing the deficit. Indeed, they have repeatedly done so over the last decade. But it is fundamentally unfair to ask them to make another major sacrifice for a plan that will raise $3.23 in taxes for each $1 cut in spending with the net result after 5 years of economic pain very little progress on the deficit. Nor is it fair that their programs be cut to the bone while the Clinton Administration and the Democrats insist on major increases in spending for their favored programs.

THE COMMITTEE ON AGRICULTURE HAS A RECORD IT CAN BE PROUD OF ON THE FOOD STAMP PROGRAM

Over the past several years the Agriculture Committee has reported numerous bills, that were enacted into law, expanding the food stamp program and other nutrition programs under the Agriculture Committee's jurisdiction. In the 100th Congress, there were 7 bills; in the 101st Congress, there were 4 bills, including the 1990 Farm Bill; and in the 102nd Congress, there were 4 bills.

****1065*838** Since the inception of the food stamp program, with pilot projects in 1961, total food stamp spending has reached $220 billion.

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In 1983, ten years ago, food stamp spending totalled $12.7 billion. In 1993, it is expected food stamp spending will total $25 billion–doubling the federal funds spent on the program. Since 1983, $175 billion has been spent on the food stamp program.

The food stamp program is designed to automatically expand to meet the food needs of poor families–without any additional legislation. People with incomes below 130% of the poverty line are generally eligible for food benefits. Food stamp benefits are indexed each year to account for the cost of food inflation. Therefore increases in participation are accommodated within the current program.

In 1981 and 1982 the rate of growth of the food stamp program was slowed down. However, according to a study prepared by the Urban Institute in May 1986, the average number of food stamp participants, the average benefit, and the total program costs all showed growth from 1981 to 1984.

The study shows that the effects of the 1981–1982 food stamp legislation was smaller than original expectations and the basic structure of the food stamp program did not change significantly. The legislative changes did not have a consistent or significant effect on the number of people receiving food stamps.

The Urban Institute Policy and Research Report concluded "... on the whole, it appears that the legislation exercised moderate restraint on program growth and costs without undermining its ability to serve current and potential recipients."

The food stamp program is carefully designed to expand to meet the needs of poor families, without any legislative changes. Over the past ten years the food stamp program has been liberalized almost every year. It was significantly expanded by Congress in 1985 and 1988.

According to figures from the Department of Agriculture, the food stamp program will cost over $28 billion by 1998–without any legislative changes to the program. With the changes adopted by the Agriculture Committee, the food stamp program will cost $30 billion by 1998, with no reform of the system and no opportunity to improve poor peoples' chances to get a job.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1066*839** WHAT IS WELFARE REFORM

The goal of welfare reform is to make taxpayers out of able bodied participants, something that will be difficult to do with the present welfare system. In the long run reform of the welfare system will benefit participants and taxpayers. Nevertheless, reform can entail costs and spending more money now on the food stamp program, before we reform the system, is not the right thing to do.

Putting $7.3 Billion into the food stamp program before any reforms are made to the welfare system is like putting the cart before the horse. There is a better way to provide help to poor families and the President's proposal to reform welfare as we know it presents an opportunity that should be seized.

WHERE IS THE REFORM OF THE WELFARE SYSTEM?

One of the themes of President Clinton's campaign and a bi-partisan goal of Congress is to end and reform welfare as we know it. Unfortunately, the food stamp proposals adopted by the Agriculture Committee do not end welfare as we know it; rather, they continue the same welfare programs. In fact, they will trap second generation food stamp recipients in the circle of poverty that undermines family and self responsibility. The President said he wanted to require those who can work, to go to work. What is missing in the food stamp package adopted by the Agriculture Committee is a significant proposal to accomplish this goal; to target assistance to the truly disadvantaged; and, to assist those who are able-bodied gain employment. In fact, the changes to the food stamp employment and training program included in the President's bill cost $20 million over five years–or less than .3%–three tenths of one percent of the entire five year cost of the bill. If we are to increase food stamp spending by over $7 billion, surely we can allocate more than .3% to employment and training programs.

Before additional funding is allocated to the food stamp program, described by the President as an investment, this

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"investment" should pay dividends–to the able bodied people now relying on food stamps, by ending this circle of poverty, and to the taxpayer who is footing the bill.

THE CASE FOR WELFARE REFORM OR ENDING THE "CIRCLE OF POVERTY"

Families participating in the food stamp program have needs other than food–the need for financial assistance, help in finding a job, housing, and medical assistance are among the major problems facing poor families. The present system with the lack of coordination and resolution of the differences among the programs, is very troublesome. There are major problems facing the entire public welfare system. Until these problems are addressed, which must include budgetary, regulatory, tax, and welfare reform, real assistance for needy families will not be achieved.

When a family is in need of help, that need often crosses program lines and the hurdles that families must scale in applying for help are immense. They often must go to different agencies, meet different eligibility standards, and abide by different rules and regulations. ****1067*840** That they are able to receive help is a reflection of their abilities, rather than the system presented to them.

The time is ripe for change. There is great interest in looking at the present welfare system and making changes that benefit the families looking for help and the administrators running the programs. President Clinton, while campaigning and in his State of the Union address, made the point we must end welfare as we know it by giving poor families the tools necessary to improve their lives and those of their children. He is right. Unfortunately, the Agriculture Committee turned its back on this opportunity.

AGRICULTURE COMMITTEE CONSIDERATION

The President's 1994 budget proposed to institute an energy tax, better known as a BTU tax. Because of the effects of this new tax the President also proposed to increase spending in programs designed to help poor families.

The Administration submitted its proposals for changes to the food stamp program to increase spending on the food stamp program by $563 million in 1994 and by $6.955 billion over a five year period. The proposals include removing the ceiling on the excess shelter deduction which will cost $2.5 billion over five years (over one-third of the new spending) resulting in additional food stamp benefits to only 15% of the families receiving food stamps. Another change increases the value of a car food stamp families may own and then increases that amount each year to reflect the changes in the consumer price index for new cars.

The Agriculture Committee adopted the Administration's food stamp proposals, with few changes, and the resulting expenditures total $7.137 billion over five years. The Agriculture Committee rejected two proposals: to offset cuts to farm programs and increase food stamp spending by $4.4 billion and to defer additional food stamp spending until the President's welfare reform proposal is submitted to Congress.

The Agriculture Committee rejected an opportunity to place $7.3 billion in a "trust fund" for future reform of the welfare system. Instead the Agriculture Committee chose to spend now and probably pay later as well.

THE ROBERTS AMENDMENT

The instructions from the Budget Committee to the Agriculture Committee required a cut in agriculture programs of $2.9 billion over five years and an expansion of $7.3 billion for the food stamp program. This means that the Agriculture Committee is charged with increasing the deficit by almost $4.4 billion–$7.3 billion minus $2.9 billion–with none of the money going to agriculture programs.

Because of the 1994 Budget Reconciliation, the Agriculture Committee will be charged with cutting farm programs and contributing to the deficit at the same time. This action was required despite the fact that farm programs have been cut by $57 billion since 1981.

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The Roberts amendment simply said–no cuts to agriculture programs and increase the food stamp program by $4.335 billion. The ****1068*841** result would have been that the Agriculture Committee would be spending an additional $4.335 billion; but, agriculture programs would not be reduced. If this amendment had been adopted, the Agriculture Committee would have been within its spending guidelines, and farmers would not have suffered another year of budget cuts.

The Roberts amendment did not cut food stamp program spending. It increased food stamp program spending over the baseline by almost $4.4 billion over five years.

Nevertheless, the Agriculture Committee chose to reject the Roberts amendment, on a straight party line vote, cut farm programs, and almost doubled this amendment's increase in food stamp spending. Farmers, who represent less tan 2% of the population, are being asked to bear 10% of the discretionary, non-defense cuts.

THE EMERSON AMENDMENT

An amendment was offered in the Agriculture Committee by Congressman Emerson to strike the food stamp expansions included in the reconciliation package and include instructions to defer the $7.3 Billion in spending until the President submits his welfare reform proposal. The Agriculture Committee rejected this proposal and chose to spend additional money on the food stamp program now without any attempt to reform the system.

THE BARRETT AMENDMENT

The Agriculture Committee rejected an amendment offered by Congressman Barrett that would save money and at the same time reduce some of the paperwork burden that has been placed on farmers since 1985. The Barrett Amendment reinforced the concept adopted by the Agriculture Committee in the 1985 Farm Bill, that when farmers receive farm program benefits, the taxpayer has the right to demand certain conservation benefits. The converse should be true. When the public withdraws benefits from farmers, the public at that point forfeits the right to tell the farmer how to farm.

Mr. Barrett's amendment (HR 1587) would exempt from conservation compliance regulations that portion of the farmer's farm for which he or she is not receiving Federal Farm Program benefits.

Our current course, reducing farm program spending and ever increasing mandates is heading agricultural policy on a collision course. Economics will dictate that the farmer simply opt out of the farm programs and the entire farm will not have to be in conservation compliance. This would be a catastrophe for our nation's effort to protect the nation's soil and water resources.

The Barrett amendment would have at least provided a minimal regulatory relief and also save money. The Agriculture Committee rejected the proposal with the intent of further examination of the issues raised by the amendment and we urge the Agriculture Committee to proceed expeditiously in considering HR 1587.

RURAL ELECTRIFICATION ACT AMENDMENTS

Although an argument could be made that these amendments are an extension of the rural development title of the 1990 Food, ****1069*842** Agriculture, Conservation and Trade Act, nonetheless, we believe the Agriculture Committee has included in a budget package a dramatic policy shift in the delivery of USDA rural development programs. This reorganization of programs and activities may create a more efficient delivery system and a more coherent federal policy apparatus. It is a cause of concern, however, that it has been adopted outside the usual procedural restraints of committee hearings and deliberation. We believe the Administration and rural America should also be concerned over the sweeping changes made to a significant program critical to rural America, without hearings and public comment.

It should be pointed out these REAct amendments achieve only modest savings, about 20% of the savings required by the House Committee on the Budget. These "lost" savings must necessarily be taken from other program functions affecting

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farmers, ranchers and rural areas. While we believe the Agriculture Committee certainly has a responsibility to soften the blow to our rural constituents who use electric and phone services. The REAct amendments adopted by the Agriculture Committee could inadvertently cause undue hardship in the future and may prove unworkable.

Should rates rise above the statutory caps in the Agriculture Committee amendments (7% in the municipal rate program for electrics and the cost-of-money program for rural telephone companies (telecos), then electric coops and rural telecos could face a situation similar to that of the early 1980s when the electric and telephone revolving fund was in fiscal crisis. At that time, repayments to the revolving fund at low rates were insufficient to service new government borrowings at very high interest rates. In the Agriculture Committee package, interest rates above the statutory 7% lending rate may mean a restriction on the number of loans made. We are troubled by the possibility rural electrics and phone companies could at some time in the future not be able to fund their capital needs at any interest rate.

FEDERAL CROP INSURANCE

We have similar concerns about the crop insurance proposal that was offered in the Agriculture Committee markup. With little discussion, no hearings, and no public comment, we are changing a basic risk management tool that producers and lenders currently appear to find increasingly suitable. Our concerns also are based on the experience some of us remember from crop insurance reform deliberations in the 101st Congress.

At that time, Members of the Agriculture Committee discussed and debated at length two bills with completely different approaches to crop insurance reform. Neither was adopted, but the Agriculture Committee with no more debate than was entertained during the business meeting of May 13th appears to have agreed in principle to a bill very similar to one that was found unworkable in 1991.

We are concerned we are being asked to undertake a major reform of crop insurance without allowing time for some of the reforms made in the program in 1990 to work. The Agriculture Committee took steps in 1990 to improve actuarial soundness and to reduce the program's cost. With only two cropping seasons since ****1070*843** those changes, adequate time has not been allowed to see if those reforms will reduce costs and improve the program.

In addition, the Federal Crop Insurance program changes adopted by the Agriculture Committee would eliminate the premium subsidy to farmers who have been responsible risk managers and purchasing crop insurance. Instead the money being used for premium subsidies, plus an additional $157 million is spent to provide 35 percent catastrophic coverage to all producers. We question whether this low level of catastrophic coverage is enough and more importantly have concerns over the impact this will have on farmers ability to secure financing from lenders.

Aside from the policy considerations, the problem encountered in 1991 was cost. In 1991, it appeared from all angles that a program similar to the one included in this bill, would cost about $1.1 billion annually, approximately $300 million more per year than the baseline. We are concerned the $157 million, over five years, the Agriculture Committee has siphoned off from other agriculture programs to fund this program will be insufficient. We are doubly concerned that the Agriculture Committee in its haste to seize this opportunity and use this "new" money may adopt a program that was unacceptable a few years ago. There are legitimate policy and budget questions needing answers. While we are not opposed to considering this latest proposal, we would prefer an orderly procedure with balanced hearings and due deliberation.

PEANUT PROGRAM PROVISIONS RELATING TO THE IMPOSITION OF AN INTERIM TARIFF AND A SECTION 22 QUOTA UNDER THE AGRICULTURAL ADJUSTMENT ACT

The Agriculture Committee's recommendations to the Committee on the Budget provides for an additional 2% assessment on peanuts for the 1993 through 1998 crops of peanuts and extends the current (1%) assessment through 1998 to ensure that the peanut program remains a no cost program. The Agriculture Committee is to be commended for meeting its instructions contained in the Budget Resolution on reductions in direct spending in this farm program, as it did for other farm programs, in a fair and balanced manner. However, section 1109(d) as explained in pertinent part in the section-by-section analysis (located earlier in this report) contained additional amendments relating to the peanut program:

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> "A second factor contributing to losses in the program is the continued quota-exempt importation of peanut paste and peanut butter. Although the importation of peanuts and peanut products is regulated under Section 22 of the Agricultural Adjustment Act, a 1953 Executive Order signed by President Eisenhower exempts peanut butter from these restrictions. Peanut paste does not have this waiver, but the restriction on peanut paste imports is not currently enforced by the U.S. Customs Service.
>
> Similarly, since the ratification of the Canadian Free Trade Agreement (Free-Trade Agreement), imports of peanut butter have increased more than 700%. Canada has a negligible to non-existent peanut production capacity. Most peanuts used to produce peanut butter in Canada are imported ****1071*844** from China or Argentina. Transshipped foreign peanuts violate the rule of origin limitations contained in the Free-Trade Agreement. In some instances, the U.S. Government has identified the prohibited use of U.S. additional peanuts re-imported to the United States from Canada in the form of peanut butter or peanut paste.
>
> The loophole in the peanut restrictions of section 22 of the Agricultural Adjustment Act should be closed. Section 1109 requires that a 55 cents per kilogram tariff be placed on all imported peanut butter and peanut paste. The increased tariff rate will expire on July 31, 1996. At that time, peanut butter and peanut paste will be placed under the existing Section 22 limitations established for peanuts and peanut products."

It is understood that the National Peanut Growers Group has submitted a letter to Secretary Espy earlier this year as allowed, under section 22 of the Agricultural Adjustment Act of 1933, claiming that imports from Canada and Argentina are tending to render ineffective or materially interfere with the Department of Agriculture peanut program. It is also understood that a task force in the Department has been studying this matter and will report its findings to the Secretary in the near future. If the Secretary finds that the imports of peanut products from Canada and/or Argentina are interfering with a loan, purchase, or other USDA program, the Secretary may so advise the President who, if he agrees with the Secretary, may cause an immediate investigation by the International Trade Commission or take other emergency action. Thus, it would appear that the peanut growers are pursuing a course to try to have the President address this problem as is set forth in current law.

It is also recommended that the Subcommittee on Specialty Crops and Natural Resources give consideration to holding hearings on this subject. Furthermore, the Committee on Ways and Means is urged to address this issue in an appropriate manner so as to review the claims made and concerns expressed by the domestic peanut growers.

However, the appropriateness of addressing this matter–at this time and in these legislative recommendations–is questioned based on amendments to the Harmonized Tariff Schedule (see section 1109(d)) that would not appear to be in our jurisdiction.

Mr. Boehner, a Member of the Agriculture Committee, made a point of order objecting to the consideration of the matters in section 1109(d) during the Agriculture Committee mark up of its recommendations to the Budget Committee (see excerpt below taken from the transcript of the business meeting):

> "Mr. Chairman, I am going to make a point of order to the peanut provisions that are in the outline that were presented. The Committee, with regard to those peanut provisions, is certainly overstepping our jurisdiction in imposing assessments on manufacturers which, in fact, become a tax. In addition, the increased tariff in the second part of the peanut provision that we've heard explained oversteps the Committee's jurisdiction in increasing the ****1072*845** tariff on imported peanut butter and peanut paste. Finally, Mr. Chairman, the third part of that peanut provision relating to section 22 currently covers peanuts and what you are doing is you are adding peanut butter and peanut paste to that section 22. Again, all of these issues are under the jurisdiction of the Committee on Ways and Means and I don't know how we can use these as part of our reconciliation letter."

The Acting Chairman, after some discussion, overruled the point of order and as a result Mr. Boehmer proceeded to offer amendments to strike what he considered to be each of the three provisions that he submitted should be deleted from the House recommendations as they related to the peanut program. One of the amendments deleting the assessment on manufacturers who utilize peanuts in processing or manufacturing their products was accepted by unanimous consent and without objection.

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Mr. Boehner's amendments to the other two provisions that remain in the Agriculture Committee's recommendation (section 1109(d)) failed adoption on a "show of hands" vote.

It is believed a better course of action in this matter would have been to avoid a jurisdictional dispute with the Committee on Ways and Means as it relates to this matter. Although there would undoubtedly be some effect on revenue and costs based on the provisions in section 1109(d), apparently no such estimate was provided to the Agriculture Committee by the Congressional Budget Office based on the jurisdictional confusion surrounding this matter.

It is recommended that in view of all the foregoing circumstances that the provisions of section 1109(d) be deleted.

Pat Roberts.
John Boehner.
Bob Smith.
Jack Kingston.
Jay Dickey.
Tom Lewis.
Jim Nussle.
John Doolittle.
Wayne Allard.
Bill Emerson.
Steve Gunderson.
Larry Combest.
Richard Pombo.
Charles Canady.
Bill Barrett.
Tom Ewing.
Bob Goodlatte.

****1073*846** ADDITIONAL VIEWS OF REPRESENTATIVE NICK SMITH

I oppose the reconciliation bill as passed by the Budget Committee because it raises taxes and fails to significantly reduce the growth of the public debt.

For the five previous fiscal years, from 1988 through 1992, the public debt increased an average of $328 billion per year. After raising taxes a record $332 billion over the next five years and having so-called deficit reduction, this reconciliation bill increases the public debt an average of $365 billion per year during the next five years.

Currently, the public debt is $4.2 trillion. This bill would allow the public debt to grow to $6.2 trillion.

We can do better.

Nick Smith.

***847** ADDITIONAL VIEWS OF CONGRESSWOMAN OLYMPIA J. SNOWE

The Committee print of this bill is exactly 1500 pages long. Before we force such unwieldy legislation on the public, we should at least take the time to know the full ramification of what we are doing. Before voting on this package, each member must ask him or herself whether this legislation makes the country better off and whether something better is possible.

I believe that the passage of this bill will not reduce the deficit, will slow economic growth, and will move us toward more rather than less government interference in our daily lives. I believe it violates whatever mandate the American public gave President Clinton during the election. I also believe there is a better way. A way that reduces excessive government interference with the economy by enacting the spending cuts needed to reduce the deficit and to put this economy back on solid ground. For these reasons, I oppose this legislation.

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The Reconciliation bill before us marks a dramatic return to traditional Democratic tax and spend policies. Its 1500 pages speak clearly about the majority party's view of this nation:

> It states that the problem of the deficit is that the people, not government, spend too much. It addresses this by decreasing private disposable income with over $275 billion in new taxes.
>
> It states that there is relatively little waste in government. As a result the spending cuts are small and on the margins.
>
> Finally, it states most definitely that the answer to our problem is more government involvement, not less.

It is a common saying that actions speak louder than words. this document must stand as a major component of the Democratic answer to our problems. As such, it is interesting to examine how closely this action tracks the earlier campaign rhetoric:

> The rhetoric was that the Democrats would cut taxes on the middle-class, that new taxes would only fall on the wealthy, ****1074** and that the Democrats would not raise taxes to fund yet more government programs. The reality is that this document contains a broad range of new taxes on the lower and middle-classes. Much of this new revenue goes to fund new spending programs.
>
> The rhetoric was that this budget would ask everyone to sacrifice. This was especially said of the energy tax, whose proponents boasted that it was applied across the board. The bill carves out special deals for politically powerful groups such as the aluminum and chlorine industries. To pay for these special deals, the tax rate on the ordinary people was raised even higher.
>
> ***848** The rhetoric was that there would be $3 in spending cuts for every dollar in tax increases. This promise had already fallen to 2 to 1 by the time the OMB Director was confirmed. The reality is that the package before us contains $275 billion in taxes and only $68 billion in net spending reductions. Most of these spending reductions are actually fee increases, so government spending will continue to rise far faster than the rates of inflation. Moreover, the bill contains many new spending programs.

This bill blatantly violates President Clinton's campaign promise not to increase taxes on the low income and the middle class. This promise was crucial to obtaining the trust needed to obtain their votes. The energy tax hits all Americans, but the low income will be hurt proportionately harder than anyone else. The energy tax will also hit every business, resulting in lost jobs.

The bill also increases taxes on Social Security payments and is used to fund increased spending elsewhere in the budget. The low income and middle class will continue to pay over 15 percent of every dollar they earn into the trust fund.

Inexplicably, this bill–advertised as an effort in deficit reduction–contains increased funding for new and existing entitlements. One of the most egregious of these is a one-year provision to spend $300 million on benefits to illegal aliens. This is a blatant example of Congress's inability to take seriously the public demand for lower spending.

I believe there is better way to deal with the problems we face. it follows the advice of the letters and phone calls I have been receiving from my constituents and its outline appears in the alternative budgets offered by Republicans. The American people want us to cut spending first. They want us to cut it dramatically, with no sacred cows. They know that the government spends too much and that most of this spending goes for purposes that are not in the national interest. They do not believe that new taxes will be used for deficit reduction.

Four times in the last 11 years Congress has told the people that new taxes would solve the deficit. In each case both spending and the deficit rose once the new revenues began to come in. The Democrats are asking Americans to once again to lower their standard of living by giving government more of their money. This ****1075** time, however, we are not even pretending to solve the problem. On its face, this document calls for more new taxes, later on, to deal with the remaining $200 billion in deficit reduction and the cost of health care reform. The people in my district overwhelmingly oppose raising taxes before we have cut spending dramatically.

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The mistakes contained in this legislation can be seen by examining one of the previous mistakes it tries to undo. The 1990 Budget agreement imposed a 10 percent luxury tax on a variety of "luxury" items, including the purchase price of boats in excess of $100,000. This tax was put forward enthusiastically by the same people who advocate the new taxes contained in the bill before us now. The luxury tax was, for them, the perfect revenue provision. It would affect only the super-rich, raising money which could be spent on programs benefitting the poor.

***849** Members from states affected by the boat tax now overwhelmingly favor its repeal. Rather than hitting the rich, it merely affected their spending patterns, shifting them to other items or to boats built overseas. The tax did, however, devastate the domestic boat industry which was already suffering from the effects of the national recession. Last year I and Senator Connie Mack released a report by the Joint Economic Committee which concluded that at least 7,600 additional jobs were lost because of this tax. The impact of these taxes fell not on the wealthy but on the hard working men and women who lost their jobs because the tax dissuaded people from purchasing the products they produced.

The boat tax has had a particularly hard impact on my home state of Maine. I have received many letters from boat builders who have lost their livelihood as a result of this misguided attempt at economic engineering. Local companies have seen their sales plummet and their business go abroad. The economic consequences of this tax have been so unmistakable that support for a repeal has become a bipartisan effort involving each member of the Maine delegation, including the Senate Majority Leader.

The boat tax also failed to raise revenues. Because Congress assumed that the tax would not affect the demand for boats, it vastly underestimated the amount of revenues that would come in to the government. Most surprisingly, Congress did not even attempt to consider the higher costs of unemployment benefits that this tax would bring about. In actuality, these costs far outweighed the additional tax revenues. The luxury tax increased the deficit, undercut the private sector, and increased the dependence of industry on business. That is why Congress first attempted to repeal it less than 18 months after it was first enacted.

Yet, this legislation enacts on a large scale the policies that failed so miserably in the luxury tax. The bill's sponsors cling firmly to the illusion that new taxes will not affect private investment and consumption decision. One listens in vain for any discussion on the opportunity cost of taking extra money from the private sector. In truth, the extra taxes on income, energy and Social Security represent money that citizens will not have to pay for their children's tuition or to purchase homes. Yet the cost of all this foregone opportunity ****1076** adds up to zero in the eyes of those who never lag in their confidence that they excel at spending other people's money.

The majority has the votes to force this package on the nation. That does not change the fact that under this package the deficit will continue to exceed $200 billion, another $1 trillion will be added to the nation's debt, and government spending will continue to grow. The American people were not kind to President Bush when they believed that he no longer understood the direction they want to go in. They are unlikely to be more lenient on President Clinton.

I can understand the reluctance of many on the other side to question their President on legislation that he has made a vital component of his Administration. However, it leads us in the wrong direction. The new taxes will not produce the promised revenue. The spending cuts do not fundamentally restructure government programs or reduce the dead weight of decades-old programs which have failed to adapt to a changing society. Congress cannot credibly ***850** argue three years from now that deficits of $200 to $250 billion were the best this Administration could do. Nor will the economic stagnation these taxes induce be attributable to a prior Administration.

For these reasons, I oppose the bill in its present form.

Although I believe that deficit reduction is vital to improving our economic prospects, I am unwilling to trust tax increases to do the job. Past experience has shown us that, given revenues, government spending will increase without limit. The one certain way to attack the deficit is to control the growth in spending. This bill does not do that.

Olympia J. Snowe.

****1077*851** ADDITIONAL MINORITY VIEWS TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993

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INTRODUCTION

Several times during the spring budget cycle, President Clinton insisted he wanted federal budget cuts in place before enactment of the huge tax increases he has proposed. This stated intention, however, has fallen prey to the same forces bedevilling so many of his other promises: The reconciliation bill reported out of the House Budget Committee–the initial implementing measure of the Clinton/Democrat budget strategy–is above all a tax bill. Its rhetorical homage to deficit-reduction is lip-service only. The bill is designed to finance the massive expansion of government that is the only real vision this Administration has. The Administration's own forecasters concede that the bill, if enacted, will offer only a brief respite from swelling deficit spending. By the end of its five-year tenure, the plan will be generating growing deficits once again. By then the Administration will have gutted the United States' national security and imposed the largest tax increase in the nation's history. Even members of the President's own party (noticing, no doubt, the plunge in the President's approval ratings)have foreseen the error of this plan. His $72-billion energy tax proposal has driven a wedge between Democrat moderates and liberals that threatens the entire budget plan. Thus, the Democrats face a dilemma. On the one hand, they could defeat Mr. Clinton's budget, handing their new President an enormous setback that would be politically emasculating. On the other, they could adopt the plan and then watch as the nation's economy, and their political fortunes, are devastated.

In seeking to alter this tax-laden legislation, Budget Committee Republicans–whose approach to deficit reduction is defined by the title of their March 10 budget proposal: Cutting Spending First–have been hamstrung by the reconciliation process itself. Reconciliation does not allow cuts in discretionary spending to offset proposed tax increases. This means that additional cuts in, say, foreign aid could not be used to displace the president's BTU tax or his Social Security tax or any of his various other taxes. Essentially, the only way to offset the tax increases in reconciliation is to propose deeper cuts in entitlement programs. By excluding the entire range of discretionary spending for the process, reconciliation therefore biases the system in favor of higher taxes.

The current situation is indicative of what happens when Democrats control both the White House and Congress. The result is a government that smothers Americans' initiative and self-determination, seizes growing shares of their income, and persists in borrowing from the nation's future. This is not simply partisan Republican ****1078*852** rhetoric. Consider the following assessments by four Nobel Prize-winning economists:

> The devastating weakness in his plan is that much of the emphasis is on corporate and personal income-tax increases that will adversely affect work and investment incentives. The proposals refuse to boldly confront the fact that the budget deficit is a serious problem in good part because of excessive government spending. The enormous pressures on the federal government to spend on thousands of programs favored by groups with political clout apparently persuaded the president not to propose a large net reduction in spending.
>
> Gary S. Becker,
> 1992 Nobel Prize in Economics.
>
> Mr. Clinton's program contains too many tax increases relative to spending cuts, and offers no assurances against dissipation of revenues by new spending.... The Clinton [tax] "reform" will mean more rents to the politicians who grant tax favors and will undermine public compliance. The Clintons recognize medical care as a major economic burden .... but the danger is that "reforms" will make total outlays even higher than the currently obscene 14% share of national product.
>
> James M. Buchanan,
> 1986 Nobel Prize in Economics.
>
> President Clinton calls for widespread sacrifice by the many through higher taxes, and concentrated benefits to the few through additional government spending–"contributions" and "investment" in Clinton double-speak. The country needs precisely the reverse: widespread benefits to the many through lower taxes and lower government spending, and concentrated sacrifice by the few through abolishing numerous government programs that, if they ever were justified, no longer are.... Government is already too big, too intrusive, too destructive of our civil and personal liberties. President Clinton would take us further down the same road. That will mean slower, not faster, economic growth; more government spending, not less; and very likely, higher deficits. More important, it will exacerbate our major social problems, all of which derive primarily from excessive and inefficient government.
>
> Milton Friedman,
> 1976 Nobel Prize in Economics.

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> So massive are the net new spending initiatives, however, (and remember, the bill for health-care expansion has yet to be delivered), that the tax increases on high-income families won't be enough. Hence the proposed broad-based energy tax, normally a nonstarter, but which the administration's masterful spin doctors may be able to sell by evoking images of wartime shared sacrifice and by hints, rather than claims (which could ****1079*853** easily be refuted), of reducing pollution.... It won't do much for economic growth, short-term or long-term.
>
> Merton H. Miller,
> 1990 Nobel Prize in Economics.

As Republicans on the House Budget committee have argued from the beginning, this budget strategy will be harmful to the economy and harmful to American workers and businesses. Considering the President's ostensible New Democrat label, it is remarkably complete return to Old Democrat thinking.

THE OVERALL BUDGET PLAN

To clarify the significance of this reconciliation bill, it is useful to review the overall budget context in which it is presented.

The President's budget, generally described in February but not fully presented until April, ostensibly called for about $420 billion in deficit reduction over five years. The goal was to be achieved predominantly through a net tax increase of $267 billion. For comparison, this tax increase is roughly $100 billion larger than that proposed in the 1990 budget agreement, which has demonstrably failed to control deficit spending. The Clinton plan also claimed $244 billion in spending reductions (excluding interest), of which $112 billion were to come from defense cuts. The domestic spending reductions would be more than offset by spending increases–called "investments"–of $182 billion.

As a result, all the President's deficit reduction was to come from defense cuts, interest savings, and tax increases. The balance of this vision of a "reinvented" government was simply a bigger government. By the end of five years, the program called for $3.60 in higher taxes to every $1 in spending cuts.

Alterations by House Democrats recast the numbers but not the basic thrust of the plan. The spending cuts were increased to $323 billion and spending increases shaved to $172 billion, for a net spending reduction of $151 billion. The spending cuts are still overwhelmingly in defense. The tax increase was boosted to $273.3 billion. The overall plan produces a five-year ratio of $1.80 in tax increases to $1 in spending cuts.

What is typical of such budgets is a virtual certainty with this one: The taxes will be levied but the spending cuts will dissipate and the government will continue to grow.

THE RECONCILIATION BILL

In addition to its $273.3 billion in higher taxes, the Democrat plan calls for $2.5 billion in extended or increased fees. Of the $139.4 billion in net spending reductions, nearly $50 billion comes from cuts in civilian and military pay. Another $8.8 billion comes from extending the ban on lump-sum payments to federal retirees. A net of $61.4 billion is to come from Medicare. (Bear in mind that Medicare recipients also will be hit by the Democrats' expanded tax on Social Security benefits and the new energy tax.) The bill goes so far as to claim $788 million in phony savings from a timing shift in federal retirees' COLAs.

****1080*854** The spending side of the ledger also contains a $7 billion increase in food stamps, a $157 million increase in crop insurance, and a $300 million add-on for Medicaid assistance to undocumented aliens. The measure also provides an increase of $28.3 billion (mostly scored as outlays) toward the Earned Income tax Credit–a boost needed mainly to offset the adverse effect of the energy tax on low-income working families.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1081*855** Of all of the tax proposals, the President's BTU tax is one of the more onerous. According to Roy Cordato, a senior economist with the Institute for Research on the Economics of Taxation, "the economic effects of the Btu taxes would all be negative....[T]he Btu tax would raise everyone's cost of living both directly and indirectly, without regard to income.

The prices people pay for heating and cooling their homes, operating their electrical appliances, and driving their cars would all go up....[T]he Btu tax would result in higher prices ... for every product....[H]igher production costs would ... [have] adverse consequences for the overall unemployment rate and the rate of growth in individual and family incomes."

The Democrats' hefty tax increases represent, of course, only the first wave of the massive government intrusion this Administration is pursuing. Soon to follow will be the Clinton health care reform plan, accompanied by additional tax increases projected to be as high as $120 billion annually. Whatever reforms the plan engenders will be overwhelmed by the acute malaise with which this added tax burden will afflict the American economy.

HISTORICAL, ECONOMIC, AND SECURITY IMPLICATIONS

A proper evaluation of the reconciliation bill requires an examination of the entire budget "strategy"–even those components that are technically outside the scope of reconciliation per se. This perspective should include historical and economic considerations as well as a review of the budget's potential impact on national security.

1. HISTORICAL PERSPECTIVE

An alternative to the Democrat budget strategy (such as the alternative offered by House Budget Committee Republicans) would reduce deficits through spending restraint, government restructuring, and regulatory reform. The President said this combination of policies would harm the strengthening recovery. History indicates he was absolutely incorrect. Spending restraint, government restructuring, and regulatory reform allow the private sector to consume or invest resources the government would have spent. These policies also reduce expected future taxes, making private sector investment more attractive.

****1082*856** The most dramatic reduction in federal spending in recent deceases followed the Second World War. In 1945, total federal outlays were $92.7 billion (in current, or nominal, dollars). Outlays were reduced to $55.2 billion in 1946, $34.4 billion in 1947, and $29.8 billion in 1948. Thus, spending was actually reduced by more than 60 percent over three years. The devotees of big government and Keynesian economics predicted these reductions would produce another major depression. Instead, a minor post-war recession was followed by the prosperous decade of the 1950s.

In sharp contrast stands the strategy of the Carter Administration in the late 1970s. Outlays rose rapidly, from $409.2 billion in 1977 to $678.2 billion in 1981. Between 1979 and 1980 alone. outlays rose by about $87.5 billion. The result, however, was not prosperity. Rather, the words "stagflation" and "malaise" were added to the American vocabulary. In fact, according to Senator Phil Gramm, excluding "the Great Depression, 1980 was the worst year for working Americans in the 20th century."

History also indicates that both food and bad economic policy know no geographical or ideological boundaries. In 1981, for example, Socialist Francois Mitterrand defeated Valery Giscard d'Estaing in the race for president of France. Within months, Mitterrand increased the minimum wage, increased taxes and spending, nationalized several private enterprises, and strengthened wage and price controls. These policies, which are remarkably similar to those proposed by the Democratic Budget Resolution and the Clinton Administration, were undertaken supposedly to reduce high unemployment. The results, however, proved to be disastrous. After three devaluations of the franc, market forces and French public opinion forced Mitterrand to pursue policies more closely resembling those of the Republican Budget Committee alternative.

The Democrat budget also fails to understand the more recent lessons of Eastern Europe and the former Soviet Union. That is, centralized control over the economy can produce spectacular achievements. But it cannot achieve either freedom or a decent standard of living for the ordinary man.

2. ECONOMIC GROWTH, DEFICIT REDUCTION, AND LONG-TERM JOB CREATION

Adopting the appropriate deficit-reduction plan is especially important because the economy has been undergoing what is termed a "supply-side" recovery. Businesses have downsized, trimmed overhead costs, installed innovative and cost-reducing

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equipment, and scuttled non-performing enterprises. The result of these moves has been to dramatically raise the level of productivity in both the manufacturing and service industries. Hence, the economy is a more efficient producer of goods and services and, as a consequence, is well poised in the current recovery to achieve high levels of growth in output and employment.

Under the Democrat budget strategy, the U.S. economy will not come close to achieving its full potential in terms of output or employment growth during the current recovery or in the long run.

The Democrat budget rejects this common-sense approach to improving the economy by featuring both increased public-sector spending and increased private-sector taxation. The plan is a convoluted ****1083*857** mixture of tax incentives, spending increases, spending reductions, and tax increases. It is certain to stifle the current economic recovery and still not achieve its ultimate goal of deficit reduction. Efforts to reduce the deficit by raising taxes will not work because increased taxation directly reduces spending by households and businesses. Consequently, the economy grows more slowly and the government receives fewer tax revenues than anticipated.

More troubling is that the Clinton/Democrat strategy depends on the blessings of the Federal Reserve. Because fiscal drag can become a problem when taxes are raised too much, the Federal Reserve must conduct an "accommodative" monetary policy for the strategy to work. But a monetary policy that seeks to ameliorate the effects of substantial fiscal drag will ultimately renew fears of inflation. The prospect of higher inflation will raise long-term interest rates, reduce private investment, retard economic growth, and increase government borrowing costs.

3. NATIONAL DEFENSE

Although the Democrats' defense budget outline is not technically part of the reconciliation bill, it warrants disussion here because of a remark that Chairman Sabo made during the consideration of the Reconciliation Bill by the House Committee on the Budget. Specifically, he stated: "I, frankly, think the administration also understates to the degree their defense program cuts defense spending. If you use a base of 1993 rather than what they are using, I frankly, think defense cuts are larger than what is stated."

The Chairman is correct.

The debate concerning the defense budget has suffered because multiple baselines have been used, as shown in Figure 1. For the major portion of the budget, the standard baseline is the so-called current services baseline. This baseline, presented in a recent Congressional Budget Office (CBO) report titled "An Analysis of the President's February Budgetary Proposals," indicates the funding required to maintain the real (i.e., inflation-adjusted) level of program. "A Vision of Change for America," however, introduced two additional baselines–the "Bush baseline" and the so-called "current Bush adjusted baseline." The Bush baseline, which was also presented in the CBO analysis, reflects the funding levels that President Bush would have proposed if he had been reelected.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1084*858** Relative to the current services baseline, President Clinton is reducing defense budget authority by $241.1 billion and defense outlays by $189.1 billion over five years. Relative to President Bush, he is reducing defense budget authority by $159.9 billion and defense outlays by $132.7 over the same period, as shown in Table 3 on the next page.

These savings are considerably higher than the $125.3 billion reduction in budget authority and $110.8 billion reduction in outlays that were discussed during the debate on the Conference Agreement. The differences can be explained in the selection of the "baseline." The Democrats claim that their baseline is consistent with the Bush "plan." As Table 3 illustrates, this is not correct; neither the standard baseline nor the Bush plan was used. Rather, the Office of Management and Budget (OMB) magically adjusted the Bush proposals downward to the "current Bush adjusted baseline," which the Majority later called the "CBO" baseline.

Playing games with the baseline may not cause significant problems for Fiscal Year 1994. The same cannot be said for future budgets. The process has allowed the Democrats, in effect, to pretend that the cuts that President Bush would have proposed as well as those assumed under the Omnibus Budget Reconciliation Act of 1990 have already occurred. Because they haven't

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the actural defense cuts will be even more difficult to accomplish. This should become evident when Secretary Aspin releases his "Bottom-up Review" later this year, and should be a major issue during the debate on the FY 1995 budget.

****1085*859** It should be noted that the "bottom-up" review already has been delayed, as explained in the following discussion in the New York Times on February 17, 1993:

> Critics, including Congressional aides and former Bush Administration officials, say that Mr. Aspin has reneged on a promise to conduct a conprehensive review of Pentagon spending for the 1994 fiscal year and that he is using the same top-down approach that he criticized the Bush Administration for last year.
>
> "If we reduce our forces from the top down, by simple subtraction, we will get a smaller defense budget and smaller forces, but the chances are good that neither the budget nor the forces will be the right ones," Mr. Aspin said on January 24, 1992.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

REMEMBER THE DEFICIT

As the public has grown more familiar with the details of the Clinton plan, its popularity (and his) have plummeted. Taxpayers are insisting (as they did through the 1992 campaign) that they want real spending cuts before Congress considers massive tax increases. Unable to satify them with the budget plan itself, the President has resorted to a gimmick: the so-call "Deficit Reduction Trust Fund."

This fund is not an official part of the reconciliation bill, but the existence of the proposal further demonstrates the failure of the President's program. To put it simply, reducing the deficit requires more revenues or less spending. The deficit trust fund offers neither; future deficits will be exactly the same with or without it.

The President's cynical use of the term "Trust Fund" attempts to fool the public into thinking that somehow funds would be set aside for the special purpose of reducing deficits. This is simply not true. Federal funds are fungible; they are all deposited in the Treasury and may be used for any purpose regardless of which accounting entry records them. Unlike money in personal trust funds, which can only be used for narrowly specified purposes, the money collected by federal trust funds can be spent for any purpose so long as an IOU is left in the trust fund account. A federal trust fund deposit is nothing more than a bookkeeping entry. That is the case with the Social Security Trust Fund, which is used to disguise the ****1086*860** size of the deficit. The deficit reduction trust fund is a public relations ploy to make it appear that the President would set aside to reduce the deficit. In fact, those taxes will pay for higher spending no matter what accounting gimmicks are employed.

Mr. Clinton has proposed large spending increases over the next five years to be funded by huge tax increases and defense spending cuts. His tax increase proposals are in trouble and he is looking for a way to cloud the issue. Hence the deficit trust fund. The President just doesn't get it. The American public doesn't want accounting gimmicks. They want the government to start cut spending first.

According to OMB, the President's budget would supposedly "save" $447 billion over the next five years. This savings consists of net spending reductions of $151 billion (including interest savings) and net tax increases of $296 billion. Unfortunately, only $37 billion of this deficit reduction occurs in the first year of his plan and that is all from higher taxes. If the President really wants to assure spending cuts before the tax increase take effect, he should submit a new budget rather than resort to accounting gimmicks.

The President also says that we need to reverse the tax cuts of the early 1980s which, he maintains, caused the deficits. The facts are that revenues have risen from $599 billion in 1981 (the year before the big tax cut) to nearly $1.150 trillion in 1993, or an increase of more than 190 percent. Unfortunately, spending during that same period swelled from $678 billion in 1981 to nearly $1,470 trillion in 1993, or nearly 220 percent. This spending growth cannot all be blamed on defense. President Reagan's successful defense rebuilding effort lasted only until 1985; the defense budget has been cut every year since then. But domestic spending, especially entitlements, has continued to climb throughout the period.

In other words, the problem is uncontrolled spending increases, not a lack of revenues.

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This is not the first time that Democrats have attempted to justify higher taxes by creating a phony deficit reduction trust fund. They tried the same ploy in 1987, when they were preparing the FY 1988 budget. It didn't fly then; it shouldn't now.

CONCLUSION

Many would consider it a major political defeat for the President if the House rejected this reconciliation bill. But the President's backers ought to give greater consideration to what would happen if this bill became law. Tax burdens would swell, the government would continue to grow, the economy would shrink, and American workers would suffer.

****1087*861** Defeat of this reconciliation bill would force the House to go back and reconstruct its budget plan. Then House Members might accept the realization that American taxpayers already have reached: that reducing the deficit requires, above all, cutting spending first.

John Kasich.
Christopher Shays.
Jim Bunning.
Wayne Allard.
Rick Lazio.
Bob Inglis.
Alex McMillan.
Olympia Snowe.
Lamar Smith.
David Hobson.
Bob Franks.
Martin Hoke.
Jim Kolbe.
Wally Herger.
Chris Cox.
Dan Miller.
Nick Smith.

1 B. Vladeck, foreword to the Tuberculosis Revival, p. v (1992).

2 Dubler, Bayer, Landesman, & White, A Report from the Working Group on Tuberculosis and HIV, in the Tuberculosis Revival, p. 24 (1992).

1 47 U.S.C. 332(c)(1) (defining "private land mobile service" to include "service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis") (emphasis supplied).

2 See "In the Matter of Amendment of part 90, Subparts M and S," 3 FCC Rcd. 1838, 1840 (1988) (expanding definition of "eligible user" of specialized mobile radio service to include individuals on an indiscriminate basis, as well as Federal government entities), aff'd 4 FCC Rcd. 356 (1988): see also "In the Matter of Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals," Notice of Proposed Rulemaking, PR Docket No. 93–38 (rel. March 12, 1993). Under the Commission's interpretation of Section 332(c)(1), the primary test for inclusion in the private and mobile radio service is that a licensee not resell interconnected telephone service for a profit. Fleet Call, Inc., FCC Rcd. 1533, 1537 (1991); see also Telocator Network of American v. FCC, 761 F. 2d 763 (D.C. Cir. 1985).

1 See also description of targeted jobs tax credit for Empowerment Zones in Part III of the report on Title XIV.

2 Taxpayers may alternatively elect to claim a reduced research credit amount in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

3 Basis in common stock of a corporate SSBIC is not reduced for purposes of calculating the gain eligible for the 50 percent exclusion for qualified small business stock under new section 1202.

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4 See also description of low-income housing credit for Empowerment Zones in Part III of the report on Title XIV.

5 Treas. Reg. section 1.469–5T(e) provides exceptions to this general rule for limited partnership interests in certain circumstances, including the circumstance where an individual taxpayer is both a general and a limited partner or where the taxpayer meets certain of the material participation tests (including the 500 hour test) applicable to persons other than limited partners.

6 As under present law, a leaseback to a disqualified person is subject to the prohibited transaction rules set forth in section 4975.

7 For this purpose, financial institutions include financial institutions in conservatorship or receivership, certain affiliates of financial institutions, and government corporations that succeed to the rights and interests of a receiver or conservator.

8 IRS Notice 88–121, 1988–2 C.B. 457. See also Treas. Reg. sec. 1.501(c)(2)–1(a).

9 See Rev. Rul. 66–151, 1966–1 C.B. 151.

10 Moreover, as under present law, any investment by a pension trust must be in accordance with the fiduciary rules of the Employee Retirement Security Act ("ERISA") and the prohibited transaction rules of the Code and ERISA.

11 A separate provision of the bill modifies the point of collection for highway diesel fuel. (See sections 14242-14243 of the bill–Item IIB.2., below).

12 The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

13 Section 170(e)(3) provides an augmented deduction for certain corporate contributions of inventory property for the care of the ill, the needy, or infants.

14 The Form 8283 must be attached to the income tax return (Form 1040) in all cases where total noncash contributions exceed $500, but the Form 8283 need not be signed by a qualified appraiser unless the $5,000 threshold per item or group of similar items is exceeded. In the case of donated art for which a deduction of $20,000 or more is claimed, a complete copy of the signed appraisal must be attached to the Form 8283.

15 Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

16 This ordinary income will continue to be treated as gain from the sale of property for purposes such as the unrelated business income tax for tax-exempt organizations and the gross income requirement for regulated investment companies.

17 Except that stock also is treated as personal property in defining a straddle for purposes of the conversion transaction provision.

18 For simplicity, the applicable rate is assumed to be compounded on an annual basis.

19 Or, in the case of a bond issued with original issue discount (OID), a price that is less than the amount of the issue price plus accrued OID.

20 Kenneth D. Smith, 24 TCM 899 (1965).

21 Of course, if at the time the options are exercised the executive is no longer a covered employee, then the deduction limitation would not apply.

22 Prior to 1963, Treasury Department regulations (originally dating back to 1915) provided that all expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes, or for propaganda (including advertising) related to any such purposes, were not deductible as "ordinary and necessary" business expenses. See

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Cammarano v. United States, 358 U.S. 498 (1959)(upholding validity of regulation denying deduction for lobbying expenses, even if expenses related to proposed legislation that affected the very survival of the taxpayer's business). In response to the Cammarano decision, Congress enacted, as part of the Revenue Act of 1962, the statutory rule contained in section 162(e)(1) specifically allowing a deduction for certain "direct lobbying" expenses.

23 Thus, lobbying of foreign government officials is not a deductible business expense under section 162.

24 See also Proposed Treasury Regulation section 1.162–20(c)(4) (proposed November 25, 1980), providing a three-part test to distinguish nondeductible "grass roots" lobbying from deductible institutional advertising.

25 See Regan v. Taxation With Representation, 461 U.S. 540 (1983) (upholding constitutionality of section 501(c)(3) lobbying restriction on grounds that legislature is not required to subsidize lobbying through a tax exemption or deduction).

26 See Rev. Rul. 70–79, 1970–1 C.B. 127;Rev. Rul. 70–449, 1970–2 C.B. 111;Slee v. Commr, 42 F.2d 184 (2d Cir. 1930).

27 For organizations making the section 501(h) election, the allowable amount of all lobbying expenditures for any tax year is the lesser of: (1) $1 million or (2) the sum of (a) 20 percent of the first $500,000 of the organization's exempt purpose expenditures for the year, plus (b) 15 percent of the next $500,000 of such expenditures, plus (c) 10 percent of the third $500,000 of such expenditures, plus (d) five percent of any additional such expenditures. "Grass roots" lobbying expenditures are limited to 25 percent of the overall permissible lobbying amount (sec. 4911(c)). Certain affiliated organizations are treated as one organization for purposes of applying the section 501(h) arithmetical test.

Under section 501(h), if lobbying expenditures (for either all lobbying or grass roots lobbying in particular) made during a taxable year exceed the allowable amounts, an excise tax is imposed on the organization equal to 25 percent of the excess lobbying expenditures (sec. 4911(a)). If the sum of the electing organization's lobbying expenditures during a four-year period exceeds 150 percent of the sum of the allowable amounts during that period, then the organization loses its tax-exempt status under section 501(c)(3) (Treas. Reg. sec. 1.501(h)-3(b)).

28 For purposes of section 4911, the term "legislation" includes action taken by a legislative body, meaning the "introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items" but does not include action taken by executive, judicial, or administrative bodies. See Treas. Reg. sec. 56.4911–2(d).

29 Under the section 4911 regulations, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of Treasury Regulation section 1.501(c)(3)-1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify as "nonpartisan analysis, study, or research." The determination of whether a publication or broadcast qualifies as "nonpartisan analysis, study, or research" generally is made on a presentation-by-presentation basis, but if a publication is prepared as part of a series, the series as a whole will be judged against the standards determining whether it is "nonpartisan analysis, study or research." Nonpartisan analysis may be made available to the general public, a segment thereof, or governmental bodies. Communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue. Treas. Reg. sec. 56.4911–2(c)(1).

Furthermore, a Treasury regulation under section 4911 provides that "[e]xaminations and discussions of broad social, economic, and similar problems are neither direct lobbying communications ... nor grass roots lobbying communications ... even if the problems are of the type with which government would be expected to deal ultimately. Thus, ... lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation." Treas. Reg. sec. 56.4911–2(c)(2).

30 Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision rather than an individual member thereof; and the response to such request must be made available to every member of the requesting body, committee, or subdivision. Treasury regulations further provide that because such assistance or advice may be given only at the express request of a governmental body, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the

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governmental body or are directly related to the materials so requested (Treas. Reg. secs. 56.4911–2(c)(3) and 53.4945–2(d)(2)).

31 The committee intends that the Secretary of the Treasury will provide guidance for distinguishing (1) attempts to influence legislation, from (2) mere monitoring of legislative activities where there is no attempt to influence the formulation or enactment of legislation. In cases where an individual or organization monitors legislation and subsequently attempts to influence the formulation or enactment of the same (or similar) legislation, it is intended that the costs of the monitoring activities generally will be treated as a nondeductible lobbying expense.

32 For purposes of the provision, the term "legislation" has the same meaning as under section 4911(e)(2), which, in turn, defines "legislation" as including "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."

Treasury regulations provide that "legislation" for purposes of section 4911(e)(2) includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies" (Treas. Reg. sec. 56.4911–2(d)(3)). Treasury regulations further provide that "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911–2(d)(4)). Thus, communications with, and attempts to influence, members of a local zoning board (acting in their capacity as members of that board, regardless of whether or not such members are elected to their position) will not be affected by the provision.

33 In order for this exception to apply, the written request must be made in the name of the governmental body (not an individual member or employee thereof) and must be specifically directed to the particular taxpayer that incurs what otherwise would be disallowed lobbying expenses. Responding to a general notice to the public to submit comments on proposed legislation would not satisfy the requirements of this exception.

34 In addition, the present-law rule disallowing a deduction for lobbying of foreign governments would remain in effect.

35 Amounts that are similar to dues include voluntary payments made by members and special assessments imposed by the recipient organization to conduct lobbying activities. This is similar to the treatment of special assessments for grassroots lobbying or campaign expenses under present-law Treasury Regulation section 1.162–20(c)(3).

36 For this purpose, lobbying expenditures incurred by an organization will be allocated first to dues paid to the organization, and any excess amount of lobbying expenditures will be carried forward and allocated to dues paid to the organization in the following year.

37 For purposes of this provision, a security is treated as sold to a person that is not related to the dealer even if the security is itself a contract between the dealer and a related person. Thus, for example, sections 267 and 707(b) of the Code are not to apply to any loss that is required to be taken into account under this provision.

38 To the extent provided in regulations to be promulgated by the Treasury Department, the exception to the mark-to-market rules for a security that is held for investment is not to apply to any notional principal contract or any derivative financial instrument that is held by a dealer in such securities.

39 For purposes of the mark-to-market rules, debt issued by a taxpayer is not a security in the hands of such taxpayer.

40 It is anticipated that the Treasury regulations will permit a dealer that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as not held for sale based on the accounting practices of the dealer but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within a reasonable period after the acquisition of the mortgages but in no event later than the date that is 30 days after the date that the mortgages are acquired.

41 A security is to be treated as clearly identified in a dealer's records as being described in one of the exceptions listed

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above if all of securities of the taxpayer that are not so described are clearly identified in the dealer's records as not being described in such exception.

For example, assume that, in the ordinary course of its trade or business, a bank originates loans that are sold if the loans satisfy certain conditions. In addition, assume that (1) the bank determines whether a loan satisfies the conditions within 30 days after the loan is made, and (2) if a loan satisfies the conditions for sale, the bank records the loan in a separate account on the date that the determination is made. For purposes of the bill, the bank is a dealer in securities with respect to the loans that it holds for sale. In addition, by identifying these loans as held for sale, the bank is considered to have identified all other loans as not held for sale. Consequently, the loans that are not held for sale are not subject to the mark-to-market rules.

42 Any gain or loss that is attributable to the period that the security was not subject to the mark-to-market rules generally is to be taken into account at the time that the security is actually sold (rather than treated as sold by reason of the mark-to-market rules).

Conversely, different rules apply to a security that originally is held by the taxpayer in a capacity that subjects the security to the mark-to-market rules, but later becomes otherwise eligible for an exception from the mark-to-market rules. For example, assume that a security to which the mark-to-market rules apply is hedged (and thus the hedge is subject to the mark-to-market rules) and the security (but not the hedge) is sold before year end. In such case, the "naked" hedge generally will be subject to the mark-to-market rules at the year end.

However, the Treasury Department has authority to issue regulations that would allow the taxpayer to identify, on the date the security is sold, the "naked" hedge as a security to which one of the exceptions to the mark-to-market rules (assuming the "naked" hedge otherwise qualifies for the exception). In making this identification, it is anticipated that the taxpayer would be required to apply the mark-to-market rules to the "naked" hedge as of the date of the sale of the security, take any resulting gain or loss into account for the taxable year of sale, and treat the "naked" hedge as a security to which the exceptions to the mark-to-market rules apply.

Whether or not the taxpayer is allowed under regulations to make the identification described above (and whether or not the taxpayer makes the identification), any gain or loss attributable to the period after the date of sale of the security will not be subject to the special character rule of the bill if the hedge is not held by the taxpayer in its capacity as a dealer during such period. Thus, if the "naked" hedge is a capital asset in the hands of the taxpayer, any gain or loss recognized with respect to the "naked" hedge that is attributable to the period after the date of sale of the security will be capital gain or loss.

43 In addition, it is anticipated that in order for any security that is held on the date of enactment of the mark-to-market rules to qualify for one of the exceptions to the mark-to-market rules, the security must be identified as being described in one of the exceptions within a reasonable period after the date of enactment but in no event later than the date that is 30 days after the date of enactment.

44 Until it was abolished by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), FSLIC insured the deposits of its member savings and loan associations and was responsible for insolvent member institutions. FIRREA abolished FSLIC and established the FSLIC Resolution Fund (FRF) to assume all of the assets and liabilities of FSLIC (other than those expressly assumed or transferred to the Resolution Trust Corporation (RTC)). FRF is administered by the Federal Deposit Insurance Corporation (FDIC). The term "FSLIC" is used hereafter to refer to FSLIC and any successor to FSLIC.

45 Department of the Treasury, Report on Tax Issues Relating to the 1988/89 Federal Savings and Loan Insurance Corporation Assisted Transactions, March, 1991 at pp. 16–17.

46 FSLIC assistance for purposes of the provision does not include "net worth assistance". "Net worth assistance" is generally computed at the time of an acquisition, without targeting loss coverage to ultimate dispositions or write-downs with respect to particular assets.

47 It is expected that, for purposes of the adjusted current earnings adjustment of the corporate alternative minimum tax, there will not be any net positive adjustment to the extent that FSLIC assistance is taken into account as compensation for a loss or in determining worthlessness and there is, therefore, no deductible loss or bad debt charge-off.

48 For purposes of determining any alternative minimum tax net operating loss carryover to periods ending on or after March

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4, 1991, it is expected that the principles described in the preceding footnote will apply.

49 In contrast to the foreign tax credit, the possessions tax credit is a "tax sparing" credit. That is, the credit is granted whether or not the electing corporation pays income tax to the possession.

50 A special allocation of research and development expenses as required by section 936(h)(5)(C)(ii)(II) can cause the proportion of the combined taxable which is allocable to the possession corporation to be less than 50 percent.

51 It is the position of the IRS that no such exception applies to dividends paid by a possession corporation. Regulations recently proposed would increase the proportion of interest and certain other expenses apportioned to foreign source passive income, and would reduce the proportion of those expenses apportioned to foreign source general limitation income, in each case solely for AMT foreign tax credit purposes. The intent of the proposed regulations is to mitigate, for taxpayers subject to the AMT, the effect of the treatment of dividends paid by possession corporations as foreign source passive income. (Prop. Treas. Reg. secs. 1.861–9, 1.861–11, and 1.861–14; 1992–22 I.R.B. 50.)

52 The amount of tax allowable for purposes of the credit is limited to 75 percent of possessions tax paid in order to correspond to the portion of a dividend from a possession corporation that would be included in the recipient shareholder's AMTI as a result of the ACE adjustment.

53 See Pharmaceutical Industry–Tax Benefits of Operating in Puerto Rico, United States General Accounting Office Briefing Report, to the Chairman, Special Committee on Aging, U.S. Senate, GAO/GGD–92–72–BR, Appendix I, Tables I.1 and I.2, pp. 12–14.

54 The Operation and Effect of the Possessions Corporation System of Taxation–Sixth Report, March 1989, p. 3.

55 The conference report on the Omnibus Budget Reconciliation Act of 1989, which added the earnings stripping rules to the Code, includes the following language:

> "Some have argued that the House report's discussion of parent-guaranteed debt would potentially have made ordinary third-party financing transactions subject to the disallowance rule, in view of the common practice of having parents guarantee the debt of their subsidiaries in order to reduce the cost of third-party borrowings. The conferees intend to clarify that the provision is not to be interpreted generally to subject third-party interest to disallowance under the rule whenever such a guarantee is given in the ordinary course. On the other hand, the conferees do not intend to preclude Treasury from disallowing interest on a guaranteed third-party debt, in appropriate circumstances where the use of guaranteed third-party debt is a device for avoiding the operation of the earnings stripping rules, just as Treasury is not precluded from disallowing interest on a back-to-back loan."
>
> House Rept. No. 101–386, 101st Cong., 1st Sess. 567 (1989). The conference report reference to back-to-back loans echoes language in the House Report on the 1989 Act:
>
> "Under current law, back-to-back loans that have no substance are collapsed. See Rev. Rul. 84–152, 1984–2 C.B. 381, Rev. Rul. 84–153, 1984–2 C.B. 383, and Rev. Rul. 87–89, 1987–2 C.B. 195. The bill directs the Secretary to issue such regulations as may be appropriate to prevent the avoidance of the purposes of the bill. The committee intends that such regulations will treat back-to-back loans through third parties (whether related or unrelated), as well as similar arrangements, like direct loans to related parties."
>
> House Rept. No. 101–247, 101st Cong., 1st Sess. 1246 (1989).

56 Even in the absence of such a corrective provision, the same base erosion could not occur if both corporations, and their assets and income, were solely domestic and fully subject to U.S. tax. In that case, to the extent interest deductions offset income of the U.S. subsidiary, the deductions become unavailable to offset income of the U.S. parent that is subject to U.S. tax. If on the other hand one of the domestic corporations has income that is not subject to U.S. tax, such a corrective provision is necessary to prevent base erosion. Present law provides one. A U.S. affiliated group with foreign and domestic income that chooses the benefits of the foreign tax credit, for example, is required to compute the foreign tax credit limitation by allocating and apportioning interest expense as if the group were single corporation (sec. 864(e)).

57 For example, assume that a foreign corporation with substantial foreign operations conducts a U.S. business in branch form. Assume further that the branch borrows money from a U.S. lender. Under regulations, the interest on this loan (extended to the single corporation that engages in worldwide operations) is not necessarily deductible in the United States. Rather, the foreign corporation may claim a deduction for interest based on that portion of its worldwide debt that

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corresponds to a ratio of its U.S. assets to its worldwide assets (Treas. Reg. sec. 1.882–5).

Similarly, where a U.S. corporation with foreign income borrows on the strength of its worldwide assets and income, and a portion of its net income that is from foreign sources is effectively exempt from U.S. tax due to foreign tax credits, some of the interest expense must be treated as reducing the foreign-source portion of net income. Such treatment increases the portion of total net income that is ineligible for shelter from U.S. tax via the foreign tax credit (Treas. Reg. sec. 1.861–9T). The Code and the regulations contain rules to ensure that the same economic result follows where the assets and liabilities of such an enterprise are split up into multiple domestic corporations (sec. 864(e); Treas. Reg. sec. 1.861–11T).

58 In other circumstances, the committee believes it appropriate that under present provisions of the Code, a deduction is denied for interest expenses that are considered to be incurred in the production of tax exempt income, in order to ensure an appropriate measurement of the net income that is not exempt from tax; and the committee further believes it to be appropriate that under those Code provisions it is immaterial that the interest is paid to an unrelated U.S. taxpayer. See Treas. Reg. sec. 1.882–5; Code sec. 265(a) (a taxpayer is denied interest deductions on indebtedness incurred or continued to purchase or carry tax-exempt municipal bonds, regardless of the fact that the taxpayer may pay that interest to another domestic taxpayer).

59 That is, a loan made by a U.S. lender will be subject to U.S. tax on a net basis whether the loan is made to the foreign or the U.S. borrower. By contrast, a guaranteed loan from an unrelated foreign lender to a U.S. corporation, the interest payments on which are subject to gross basis U.S. tax, differs significantly from a loan by the foreign lender to the foreign parent which then loans to the U.S. subsidiary. In the second case the interest payments received by the unrelated lender are not subject to U.S. tax. Thus, it may be argued that it is appropriate to view the gross basis tax imposed in the first case as additional U.S. tax incurred by reason of the guaranteed loan, which in turn serves as an adequate substitute for interest deduction disallowance to the U.S. borrower.

60 H.R. Rep. No. 101–386, 101st Cong., 1st Sess. 569–70 (1989).

61 A related person is defined by reference to the related person definition applicable for purposes of the controlled foreign corporation rules (that is, sec. 954(d)(3)).

62 “Testimony in hearings before [the House Committee on Ways and Means] suggested . . . that to impose the U.S. tax currently on the U.S. shareholders of American-owned businesses operating abroad would place such firms at a disadvantage with other firms located in the same areas not subject to U.S. tax.” H.R. Rep. No. 1447, 87th Cong., 2d Sess. 57–58 (1962).

63 H.R. Rep. No. 99–841, 99th Cong., 2d Sess. II–644 (1986) (Conference Report to accompany H.R. 3838, the Tax Reform Act of 1986).

64 Under the previously taxed income rules of section 959, retained earnings of the foreign corporation that are treated as having been previously included in the income of the U.S. shareholder include retained earnings that were previously included in the income of another U.S. person that is a proven predecessor in interest to the U.S. shareholder. In addition, as discussed below under “Coordination and ordering provisions,” under the bill’s rules for the treatment of previously taxed income, the amount of earnings treated as having been previously included in the income of the shareholder on account of excess passive assets (i.e., the amount of earnings described in section 959(c)(1)(B)) includes not only earnings that actually resulted in an inclusion of income under section 951(a)(1)(C), but also earnings that would have resulted in such an inclusion but for being attributable to earnings that had been previously taxed as subpart F income under section 951(a)(1)(A).

65 Earnings and profits generally are computed in the foreign corporation’s functional currency, in accordance with the rules of sections 986 and 964. Earnings and profits with respect to pre-1987 taxable years are initially computed in U.S. dollars in accordance with the rules of Treas. reg. sec. 1.964–1, and are then translated into the foreign corporation’s functional currency at the “spot” rate that prevailed on the first day of the foreign corporation’s first taxable year beginning after December 31, 1986, as provided in IRS Notice 88–70, 1988–2 C.B. 369.

66 Unlike the PFIC rules of present law, the bill offers no option to measure assets by fair market value.

67 As under current law, actual distributions are taken into account after the application of section 951(a)(1)(A).

68 This example assumes that all years at issue begin after the phase-in period (discussed below) provided by the bill, i.e.,

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after September 30, 1997.

69 As noted above, under the previously taxed income rules of section 959, retained earnings of the foreign corporation that are treated as having been previously included in the income of the U.S. shareholder include retained earnings that were previously included in the income of another U.S. person that is a proven predecessor in interest to the U.S. shareholder. In addition, as discussed above under "Coordination and ordering provisions," under the bill's rules for the treatment of previously taxed income, the amount of earnings treated as having been previously included in the income of the shareholder on account of investments of earnings in U.S. property (i.e., the amount of earnings described in section 959(c)(1)(A)) includes not only earnings that actually resulted in an inclusion of income under section 951(a)(1)(B), but also earnings that would have resulted in such an inclusion but for being attributable to earnings that had been previously taxed as subpart F income under section 951(a)(1)(A).

70 For example, in the case of U.S. shareholders of a controlled foreign corporation that is engaged in the active conduct of a trade or business as a broker or dealer in securities, and that receives interest, dividends, rent, or royalties from a related person (which may or may not be a corporation), the determination of the amount of such income that is allocable to income of the related person other than passive income is made by applying the exception for certain income of securities brokers and dealers to the income of the related person, whether or not the related person is a corporation, solely for purposes of applying the PFIC income test to income earned by the controlled foreign corporation through the related person.

71 Such activities might include: (a) purchasing or selling inventory securities such as stock, debt obligations, commodity futures or other securities or derivative financial products (including notional principal contracts) from or to unrelated persons, arranging such purchases or sales on behalf of unrelated persons who are customers in the course of a business as a securities broker, and holding stock, debt obligations and other securities as inventory for sale to such customers; (b) arranging notional principal contracts and other hedging transactions for, or entering into such transactions or any other derivative financial products with, unrelated persons who are customers; (c) arranging foreign exchange transactions for, or engaging in foreign exchange transactions with, unrelated persons who are customers; (d) underwriting issues of stocks, debt obligations or other securities under best-efforts or firm-commitment agreements with unrelated persons; (e) purchasing, selling, discounting, or negotiating on a regular basis for unrelated persons notes, drafts, checks, bills of exchange, acceptances or other evidences of indebtedness; (f) lending inventory stocks or securities to unrelated persons; (g) engaging in hedging activities directly related to bona fide securities activities described in items (a) through (f) of this list; (h) servicing mortgages; (i) investment banking activities; (j) providing financial or investment advisory services, investment management services, fiduciary services, trust services, or custodial services to unrelated persons; (k) providing margin or other financing for unrelated persons who are customers, secured by securities or money market instruments, including repurchase agreements, or financing in connection with any of the bona fide securities activities described in items (a) through (j) of this list; (l) disposing of any property (whether tangible or intangible, personal or real) that was used or acquired in the active conduct of the securities business, but only to the extent that the property was held in connection with a bona fide securities activity; and (m) any other activity that the Secretary may determine to be a bona fide securities activity that is commonly conducted by active foreign securities dealers in the ordinary course of their securities business.

72 One approach that the Treasury may wish to consider in drafting regulations under this provision would be to treat a controlled foreign corporation as an active foreign securities broker or dealer for a taxable year if it satisfies a securities-related activity test, a gross income test and a licensing requirement. To satisfy the securities-related activity test, the foreign corporation could be required to qualify as (i) a "regular dealer" in stocks, securities and derivative financial products within the meaning of section 954(c) and the regulations thereunder, (ii) a "qualified affiliate" or (iii) to the extent provided in the regulations, a qualified foreign securities broker. Under the gross income test of the regulations, the foreign corporation could be required to derive at least 60 percent of its total gross income for the taxable year from bona fide securities-related activities. The PFIC look-through rules of sections 1296(b)(2)(C) and 1296(c) would not apply for purposes of this test. Under the licensing requirement of the regulations, a controlled foreign corporation (other than a qualified affiliate) that is not registered as a securities broker or dealer under the Securities Exchange Act of 1934 could be required to be licensed or authorized in the country in which it conducts its principal securities dealer operations (or, in the case of a qualified foreign securities broker, its principal securities broker operations) to conduct the bona fide securities-related activities that it performs in that country. These activities would be required to be subject to the appropriate securities regulatory authorities of that country.

A "qualified affiliate" could be defined as a foreign corporation that regularly performs in the ordinary course of its trade or business at least one bona fide securities-related activity, and that is also a member of an affiliated group that (1) derives

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50 percent or more of its total gross income for the year from bona fide securities-related activities, and (2) includes a corporation that either actively conducts business in the United States as a registered securities broker or dealer or qualifies as a "regular dealer" in stock, securities and derivative financial products under section 954(c) and the regulations thereunder or (to the extent provided in regulations) as a qualified foreign securities broker. The regulations could also require that the gross income of the registered securities broker or dealer, "regular dealer" or qualified foreign securities broker represent at least 20 percent of the total gross income of the affiliated group for the year. It might be necessary for Treasury regulations to modify the definition of affiliated group provided in section 1504 in order to carry out the purposes of this provision, such as to accommodate the inclusion of foreign corporations and the ownership of stock by U.S. shareholders that are U.S. partnerships.

73 See, e.g., Interaction Between U.S. Tax Policy and Domestic Research and Development: Hearing on S. 58 and S. 716 Before the Subcomm. on Taxation and Debt Management of the Senate Comm. on Finance, 100th Cong., 1st Sess. (1987).

74 P.L. 99–514, sec. 1201(a) (1986).

75 Former Treas. Reg. sec. 1.904–4(b).

76 Section 904(d)(2)(A)(iii)(IV) provides that the separate foreign tax credit limitation for passive income does not include foreign oil and gas extraction income as defined in section 907(c). Regulations promulgated under section 907 include in the definition of foreign oil and gas extraction income certain interest earned on working capital (i.e., interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the taxpayer's working capital requirements and specifically anticipated business needs) that is related to activities with respect to which the taxpayer derives foreign oil and gas extraction income (Treas. Reg. sec. 1.907(c)-1(f)(3)).

Treasury Reg. sec. 1.907(c)-1(f)(3) also includes certain interest on working capital within the definition of foreign oil related income if the working capital is required for the taxpayer's business operations which generate foreign oil related income. Section 954(b)(8) provides that income which is foreign base company oil related income (defined under sec. 954(g) to include foreign oil related income) is not considered foreign personal holding company income. Only interest that is of a kind which would be foreign personal holding company income is passive for foreign tax credit limitation purposes (sec. 904(d)(2)(A)). Like interest on working capital related to foreign oil and gas extraction income, therefore, interest on working capital related to foreign oil related income is excluded from the separate foreign tax credit limitation for passive income.

Similarly, income which is treated as foreign base company shipping income under section 954(f) is not considered foreign personal holding company income (sec. 954(b)(6)), and interest income on working capital associated with a taxpayer's foreign base company shipping operations is treated as foreign base company shipping income under regulations (Treas. Reg. secs. 1.954–6(e)(2)(ii) and 1.955A–2(b)(2)(i)). Moreover, the statutory foreign tax credit separate limitation provisions provide a special overlap rule under which income described in any other separate limitation category (in this case, the separate limitation for shipping income) is not considered passive income (secs. 904(d)(2)(A)(iii)(I) and 904(d)(2)(D)).

77 Treas. Reg. sec. 1.907(c)-1(f)(3). The current version of this regulation, adopted in 1991 (see T.D. 8338), was preceded by Treas. Reg. sec. 1.907(c)-1A(e)(3) (see T.D. 7961; T.D. 8160).

78 See, e.g., Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 863 (1987).

79 The analogous "gross valuation misstatement" is defined in the same terms, except for replacing "200" with "400" and replacing "50 percent" with "25 percent."

80 The analogous "gross valuation misstatement" involves a net section 482 transfer price adjustment of $20 million.

81 In addition, any portion of the net increase in taxable income attributable to a transaction solely between foreign corporations is disregarded (unless the treatment of that transaction affects the determination of any such foreign corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business in the United States).

82 These exclusive rules are contained in proposed Reg. sec. 1.6662–5(j)(5). According to the preamble to the proposed

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regulation, a net section 482 transfer price adjustment for which the rules of sec. 1.6662–5(j)(5) are not satisfied will also not satisfy the general reasonable cause and good faith exception under section 6664(c). 58 Fed. Reg. at 5305.

By contrast, the preamble indicates that a valuation misstatement involving a related party transfer price 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct price is subject to the general reasonable cause/good faith regulations under section 6664(c). In addition, according to the preamble, if such a valuation misstatement satisfies the reasonable cause and good faith exclusion provisions under proposed sec. 1.6662–5(j)(5), then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of the general rules.

83 Prop. Reg. sec. 1.6662–5(j)(5), 58 Fed. Reg. at 5308.

84 Department of the Treasury, Summary of the Administration's Revenue Proposals 55 (February 1993).

85 Notice 88–123 ("A Study of Intercompany Pricing under Section 482 of the Code"), 1988–2 C.B. 458, 462; Tax Underpayments by U.S. Subsidiaries of Foreign Companies: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means, 101st Cong., 2d Sess. 124, 125 (1990) (testimony of Edward Romoff, IRS).

86 Rev. Rul. 83–51, 1983–1 C.B. 48.

87 See, e.g., Dorzback v. Collison, 195 F.2d 69 (3d Cir. 1952).

88 Certain additional exceptions to this general rule apply only in the case of a corporate recipient of interest. In such a case, the term portfolio interest generally excludes (1) interest received by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), and (2) interest received by a controlled foreign corporation from a related person.

89 Treas. Reg. sec. 1.897–1(h). FIRPTA applies in the case of a "disposition" of a USRPI. Treasury Reg. sec. 1.897–1(h) generally defines a disposition as a transaction that gives rise to gain under section 1001 of the Code. Section 1001 does not apply to interest received on indebtedness.

90 Sec. 127 of P.L. 98–369.

91 Staff of the Joint Committee on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, (JCS–41–84), December 31, 1984, pp. 391–392.

92 For purposes of determining whether interest is contingent interest under the bill, the term related person means any person who is related to the borrower under Code section 267(b) or 707(b)(1). In addition, a related person, for this purpose, includes a party to an arrangement undertaken for a purpose of avoiding the application of this provision of the bill.

93 The London Inter-Bank Offered Rate.

94 See, e.g., Commissioner v. Court Holding Co., 324 U.S. 331 (1945).

95 56 T.C. 925 (1971), acq. on another issue, 1972–2 C.B. 1.

96 Rev. Rul. 84–152, 1984–2 C.B. 381;Rev. Rul. 84–153, 1984–2 C.B. 383.

97 Rev. Rul. 87–89, 1987–2 C.B. 195.

98 Tech. Adv. Mem. 9133004 (May 3, 1991).

99 The applicable Btu factor for distillate fuel oil #2 is 5.852 and for kerosene is 5.670.

100 See, section 6420(c)(1)-(3) for the definition of use on a farm for farming purposes.

101 Because both the end user and the LDC are liable for the tax in such circumstances, the Treasury Department can seek to collect the tax from either or both.

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102 For purposes of determining whether the $3.5 million threshold is met, each member of a controlled group is treated as a separate user or LDC.

103 In determining when coal has been "received" for purposes of this provision, any coal delivered to a person who will use the coal in the geographic proximity of the location where it is delivered is considered to have been received by that person at the facility where it will be used.

104 In the case of coal delivered to small and residential users, unless the Treasury Department by regulation provides otherwise, the committee intends that the national average Btu content of coal be applied if the actual Btu content of the coal delivered is not known.

105 In such cases, the Treasury Department may seek collection from either the seller or the end user.

106 In determining whether the $3.5 million threshold is met, , each member of a controlled group (of the buyer or seller) is treated as a separate entity.

107 This tax rate per kilowatt hour is calculated as follows: 10,335 Btu's multiplied by the base rate divided by 1 million Btu's.

108 In such cases, exemptions will be accomplished by refunds of tax previously paid.

109 Similarly, a use tax is imposed on the subsequent fuel use of any product purchased without payment of tax under a claim of exemption.

110 The committee intends that the percentage of such use may be reviewed by the Treasury Department as a condition of granting registration for purchases without payment of tax.

111 The relative portions are determined on the basis of the proportionate Btu content of the electricity and steam produced with the fuels.

112 Statement of Eugene R. McCormick, Federal Highway Administration, Department of Transportation, Hearing on Shortfall in Highway Trust Fund Collections, Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation (May 5, 1992).

113 In general, information returns are required regarding payments to a corporation engaged in providing medical and health care services or engaged in billing and collecting payments with respect to medical and health care services.

114 An "understatement" of income tax is the excess of the tax required to be shown on the return over the tax imposed which is shown on the return (reduced by any rebates of tax).

115 In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

116 In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

117 Ordinarily, a subsequent comparison based upon revised financial projections will be required where there is a material change in the taxpayer's investment or in the tax shelter (e.g., a material change in the investment structure or strategy of the tax shelter) that was not reflected in the original financial projections.

118 If a statement is made in connection with the offering that a tax benefit will be available from the shelter, that benefit must be treated as "reasonably anticipated", regardless of whether that benefit would be taken into account in a reasonable financial projection.

119 Lenders are generally required to report any foreclosure or other acquisition of property in satisfaction of a debt secured by that property (sec. 6050J). Such events may effect a discharge of indebtedness. The committee intends that the Treasury Department issue guidance to coordinate reporting under this section with reporting on foreclosures and abandonments under

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section 6050J.

120 The committee expects that the current Treasury Department guidelines requiring other Federal agencies to report discharged debt will continue to apply.

121 Such returns are required regardless of whether the debtor is subject to tax on the discharged debt. For example, Congress does not expect reporting financial institutions and agencies to determine whether the debtor qualifies for an exclusion under section 108.

122 The date of discharge is required to facilitate the use of such information returns with respect to fiscal year taxpayers.

123 With respect to these entities, any return required by the bill shall be made by the officer or employee appropriately designated to make these returns.

124 In the case of intentional disregard of the filing requirements, the penalty is not less than $100 per failure and the $100,000 annual limitation does not apply.

125 A separate Ways and Means Committee trade provision (in Title XIII) would extend the current Customs processing fee for three years, through September 30, 1998.

126 In the case of a short taxable year, the amortization deduction is to be based on the number of months in such taxable year.

127 Insurance expirations are records that are maintained by insurance agents with respect to insurance customers. These records generally include information relating to the type of insurance, the amount of insurance, and the expiration date of the insurance.

128 See below for a description of the exceptions for certain patents, certain computer software, and certain interests in films, sound recordings, video tapes, books, or other similar property.

129 As under present law, the portion of the purchase price of an acquired trade or business that is attributable to accounts receivable is to be allocated among such receivables and is to be taken into account as payment is received under each receivable or at the time that a receivable becomes worthless.

130 See below, however, for a description of the exception for certain rights to receive tangible property or services from another person.

131 A right granted by a governmental unit or an agency or instrumentality thereof that constitutes an interest in land or an interest under a lease of tangible property is excluded from the definition of a section 197 intangible. See below for a description of the exceptions for interests in land and for interests under leases of tangible property.

132 Section 1253(b)(1) of the Code.

133 Only the costs incurred in connection with the renewal, however, are to be amortized over the 14-year period that begins with the month that the franchise, trademark, or trade name is renewed. Any costs incurred in connection with the issuance (or an earlier renewal) of a franchise, trademark, or trade name are to continue to be taken into account over the remaining portion of the amortization period that began at the time of such issuance (or earlier renewal).

134 Section 1253(d)(1) of the Code.

135 A temporal interest in property, outright or in trust, may not be used to convert a section 197 intangible into property that is amortizable more rapidly than ratably over the 14-year period specified in the bill.

136 See below for a description of the treatment of assumption reinsurance contracts.

137 For example, a data base would not include a dictionary feature used to spell-check a word processing program.

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138 See Associated Patentees, Inc., 4 T.C. 979 (1945); and Rev. Rul. 67–136, 1967–1 C.B. 58.

139 The bill provides that a sublease is to be treated in the same manner as a lease of the underlying property. Thus, the term "section 197 intangible" does not include any interest as a sublessor or sublessee of tangible property.

140 The lease of a gate at an airport for the purpose of loading and unloading passengers and cargo is a lease of tangible property for this purpose. It is anticipated that such treatment will serve as guidance to the Internal Revenue Service and taxpayers in resolving existing disputes.

141 In no event is the present value of the fair market value rent for the use of the tangible property for the term of the lease to exceed the fair market value of the tangible property as of the date of acquisition. The present value of such rent is presumed to be less than the value of the tangible property if the duration of the lease is less than the economic useful life of the property.

142 For purposes of this exception, the term "interest under any existing indebtedness" is to include mortgage servicing rights to the extent that the rights are stripped coupons under section 1286 of the Code. See Rev. Rul. 91–46, 1991–34 I.R.B. 5 (August 26, 1991).

143 See, e.g., INDOPCO, Inc. v. Commissioner, 112 S. Ct. 1039 (1992).

144 For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision, because each allowance grants a right to a fixed amount of emissions. It is expected that the Treasury Department will provide guidance regarding the interaction of section 461 with these provisions. No inference is intended that would require the Treasury Department to disturb the result in Rev. Proc. 92–91, 1992–46 I.R.B. 32.

145 For this purpose, the abandonment of a section 197 intangible or any other event that renders a section 197 intangible worthless is to be considered a disposition of a section 197 intangible.

146 These special rules do not apply to a section 197 intangible that is separately acquired (i.e., a section 197 intangible that is acquired other than in a transaction or a series of related transactions that involve the acquisition of other section 197 intangibles). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. In no event, however, is the termination or worthlessness of a portion of a section 197 intangible to be considered the disposition of a separately acquired section 197 intangible. For example, the termination of one or more customers from an acquired customer list or the worthlessness of some information from an acquired data base is not to be considered the disposition of a separately acquired section 197 intangible.

147 The termination of a partnership under section 708(b)(1)(B) of the Code is a transaction to which this rule applies. In such a case, the bill applies only to the extent that the adjusted basis of the section 197 intangibles before the termination exceeds the adjusted basis of the section 197 intangibles after the termination. (See the example below in the discussion of "Treatment of certain partnership transactions.")

148 No inference is intended whether any asset treated as a section 197 intangible under the bill is eligible for like kind exchange treatment.

149 This discussion is subject to the application of the anti-churning rules which are discussed below.

150 An assumption reinsurance transaction is an arrangement whereby one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company). In addition, for purposes of the bill, an assumption reinsurance transaction is to include any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338 of the Code.

151 The amount paid or incurred by the acquirer/reinsurer under an assumption reinsurance transaction is to be determined under the principles of present law. (See Treas. Reg. sec. 1.817–4(d)(2).)

152 There is no intention to codify any aspect of the existing regulations under section 1060 or other provisions.

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Furthermore, it is expected that the Treasury Department will review the operation of the regulations under sections 1060 and 338 in light of new section 197.

153 However, with certain exceptions, an amortization deduction is not to be allowed under the bill for goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill if: (1) the section 197 intangible is acquired after July 25, 1991; and (2) either (a) the taxpayer or a related person held or used the intangible on July 25, 1991; (b) the taxpayer acquired the intangible from a person that held such intangible on July 25, 1991, and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible on July 25, 1991. See below for a more detailed description of these "anti-churning" rules.

154 It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

155 It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

156 Amounts that are properly deductible pursuant to section 1253 under present law are to be treated for purposes of the anti-churning provision as amounts for which depreciation or amortization is allowable under present law.

157 In addition to these rules, it is anticipated that rules similar to the anti-churning rules under section 168 of the Code will apply in determining whether persons are related. (See Prop. Treas. Reg. 1.168–4 (February 16, 1984).) For example, it is anticipated that a corporation, partnership, or trust that owned or used property at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and that is no longer in existence will be considered to be in existence for purposes of determining whether the taxpayer that acquired the property is related to such corporation, partnership, or trust.

As a further example, it is anticipated that in the case of a transaction to which section 338 of the Code applies, the corporation that is treated as selling its assets will not to be considered related to the corporation that is treated as purchasing the assets if at least 80 percent of the stock of the corporation that is treated as selling its assets is acquired by purchase after July 25, 1991.

158 E.g., sections 401(c)(2) and 911(d) of the Code and old section 1348(b)(1)(A) of the Code.

159 If the claimed deduction for a noncash gift exceeds $5,000 per item or group of similar items (other than certain publicly traded securities), a qualified appraiser must sign the Form 8283, and an authorized representative of the donee charity also must sign the Form 8283, acknowledging receipt of the gift and providing certain other information. In certain situations, information reporting by the donee charity is required if it subsequently disposes of donated property (sec. 6050L).

160 See, e.g., Rev. Rul. 67–246, 1967–2 C.B. 104.

Under current IRS practice, certain small items and token benefits (e.g., key chains and bumper stickers) that have insubstantial value are disregarded, such that the full amount of the contribution is deductible. Rev. Proc. 90–12, 1990–1 C.B. 471, provides that tokens or benefits given to the donor in connection with a contribution will be considered to have insubstantial value if (1) the payment occurs in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution, and (2) either (a) the fair market value of all the benefits received in connection with the payment is not more than two percent of the payment, or $50, whichever is less, or (b) the payment made by the patron is $25 or more (adjusted for inflation) and the only benefits received in connection with the payment are token items (e.g., key chains or mugs) that bear the organization's name or logo and that (in the aggregate) are within the limits for "low-cost items" under section 513(h)(2). See also Rev. Proc. 92–49, 1992–26 IRB 18 (amplifying Rev. Proc. 90–12, by allowing charities to distribute certain low-cost items to contributors without affecting the deductibility of the contribution).

161 However, Schedule A to the Form 1040 (and the accompanying instructions) inform taxpayers that if they made a contribution to a charity and received a benefit in return, the value of that benefit must be subtracted in calculating the charitable contribution deduction.

162 However, the disclosure requirement of section 6113 does not apply to an organization the gross receipts of which in

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each taxable year are normally not more than $100,000, nor does the disclosure requirement apply to any solicitation made by letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year (sec. 6113(b)(2)(A) and (c)(2)).

163 See section 6033(a)(2) and Rev. Proc. 83–23, 1983–1 C.B. 687.

164 See section 6033(b)(5) and Treas. Reg. sec. 1.6033–2(a)(2)(ii)(f).

165 Separate payments generally will be treated as separate contributions and will not be aggregated for the purposes of applying the $750 threshold. In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as separate payments.

166 If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer's contribution, the written substantiation must include a statement to that effect. The substantiation need not contain the taxpayer's social security number or taxpayer identification number (TIN).

167 In the case where a taxpayer makes a noncash contribution claimed by the taxpayer to be worth $750 or more, the taxpayer is required to obtain from the charity a receipt that describes the donated property (and indicates whether any good or service was given to the taxpayer in exchange), but the provision does not require the charity to value the property it receives from the taxpayer.

168 The provision requires that the written acknowledgment provide information sufficient to substantiate the amount of the deductible contribution, but the acknowledgment need not take any particular form. Thus, for example, acknowledgments may be made by letter, postcard, or computer-generated forms. Further, a donee organization may prepare a separate acknowledgment for each contribution, or may provide donors with periodic (e.g., annual) acknowledgments that set forth the required information for each contribution of $750 or more made by the donor during the period. It is intended that a charitable organization that knowingly provides a false written substantiation to a donor will be subject to the penalties provided for by section 6701 for aiding and abetting an understatement of tax liability.

169 The committee intends that the disclosure be made in a manner that is reasonably likely to come to the attention of the donor. For example, a disclosure of the required information in small print set forth within a larger document might not meet the requirement.

170 The committee intends that, in the case of religious organizations, a quid pro quo contribution (for purposes of the substantiation and disclosure requirements) is limited to an exchange of goods or services that are generally available on a commercial basis, or advertised for an established price (e.g., tuition, travel and entertainment, and consumer goods). No inference is intended, however, whether or not any contribution outside the scope of the bill's substantiation or reporting requirements is deductible (in full or in part) under the present-law requirements of section 170.

171 The committee intends that, following enactment of the bill, the Secretary of the Treasury will expeditiously issue a notice or other announcement providing guidance with respect to the bill's substantiation and disclosure provisions. In this regard, the committee expects that such Treasury guidance will urge charities to assist taxpayers in meeting the substantiation requirement.

172 If the employer chooses not to use the 20-percent method, withholding may be computed by aggregating the supplemental payments with regular wages paid within the same calendar year for the last preceding payroll period or the current payroll period. The employer would then use withholding tables to determine the total tax on this aggregate amount. The amount to be withheld for the supplemental wages is the total tax less any amount already withheld for regular wages included in the aggregate amount.

173 An area will be treated as nominated by a State or local government if it is nominated by such other entity as may be specified by an Enterprise Board (to be established in the future).

174 For purposes of the bill, a "rural area" means any area which is (1) outside a metropolitan statistical area as defined by the Secretary of Commerce, or (2) determined by the Secretary of Agriculture to be a rural area. For purposes of the bill, the term "urban area" means an area which is not a rural area.

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175 Under the bill, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

176 An area's designation may be revoked only after a hearing on the record at which officials of the State and local governments are given an opportunity to participate.

177 The poverty rate is to be determined by the 1990 census or subsequent census data. If areas are not tracted as population census tracts, the equivalent county divisions as defined by the Bureau of the Census for purposes of defining poverty areas would be treated as population census tracts.

178 With respect to an area nominated to be an empowerment zone, the appropriate Secretary may reduce one of these poverty criteria by five percentage points for not more than 10 percent of the population census tracts (up to a maximum of five population census tracts) in the nominated area. With respect to an area nominated to be an enterprise community, the appropriate Secretary may reduce one of the poverty criteria as described in the preceding sentence or, as an alternative, may reduce the 35-percent poverty threshold by ten percentage points (i.e., to 25 percent) for up to three population census tracts.

179 The appropriate Secretary has no discretion to reduce the 35-percent poverty rate threshold for tracts located in a central business district that is part of an empowerment zone or to reduce the 30-percent poverty rate threshold for tracts located in a central business district that is part of an enterprise community.

180 In the case of an Indian reservation, the reservation governing body is deemed to be both the State and local governments with respect to such area.

181 The bill provides that the required strategic plan may not include any action to assist any business in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through establishment of a new branch, affiliate, or subsidiary is permitted if (1) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and (2) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

182 The committee intends that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate any wage credit claimed under the bill.

183 To prevent avoidance of the $20,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) would be treated as a single employer.

184 Employers would be required to take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of receiving advance payments of the earned income tax credit (EITC).

185 The wage credit is not available with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the wage credit is not available with respect to any individual employed by a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) and (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

186 For this purpose, an individual is economically disadvantaged if he is a member of an economically disadvantaged family under present-law section 51(d)(11).

187 The TJTC expired on June 30, 1992, but is permanently extended by another provision contained in the bill.

188 The restrictions applicable with respect to employees with respect to whom the wage credit can be claimed also apply here. Thus, for example, the credit for savings contributions is not available with respect to any individual employed at certain facilities. See the discussion under the wage credit for further explanation.

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189 This requirement does not apply to a business carried on by an individual as a proprietorship.

190 For this purpose, the term "employee" includes a self-employed individual (within the meaning of section 401(c)(1)).
The committee intends that the Secretary of the Treasury will prescribe regulations to determine the appropriate treatment of part-time employees for purposes of calculating whether 35 percent of the employees are residents of the empowerment zone.

191 However, the bill specifically provides that a "qualified business" does not include (1) any trade or business consisting of the operation of any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (2) any trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

192 Thus, used property may constitute qualified zone property so long as it has not previously been used within the empowerment zone.

193 Qualified zone property does not include any property to which the alternative depreciation system under section 168(g) applies, determined (1) without regard to section 168(g)(7), and (2) after application of section 280F(b).

194 Accelerated depreciation will be available with respect to property that is not expensed under section 179.

195 The low-income housing credit expired on June 30, 1992, but is permanently extended by another provision contained in section 14142 of the bill.

196 The contribution of the CDC must be available for use by the CDC for up to a 10-year period, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit under the bill may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer would be allowed to claim a charitable contribution deduction (subject to the present-law rules under section 170) and, in addition, could claim the credit under the bill's provisions.

197 The bill defines "qualified low-income assistance" as assistance (1) which is designed to provide employment and business opportunities to individuals who are residents of the operational area of the CDC, and (2) which is approved by the Secretary of HUD.

198 At least four of the selected CDCs must operate in rural areas.

199 Tax is $500 per year per premise for businesses with gross receipts of less than $500,000 in the preceding taxable year.

200 Persons who received vaccines before the Program's effective date of October 1, 1988 ("retrospective cases") also may be eligible for compensation under the Program if they had not yet received compensation and elected to file a petition with the United States Claims Court on or before January 31, 1991. Under the Program, awards in retrospective cases are somewhat limited compared to "prospective cases" (i.e., those where the vaccine was administered on or after October 1, 1988). Awards in retrospective cases are not paid out of the Vaccine Trust Fund but are paid out of funds specially authorized by Congress. See 42 U.S.C. sec. 300aa-15(i), (j) (appropriating $80 million for fiscal year 1989 and for each subsequent year).

201 Compensation may not be awarded, however, if there is a preponderance of the evidence that the claimant's condition or death resulted from factors unrelated to the vaccine in question.

202 42 U.S.C. sec. 300aa-15.
The committee wishes to clarify its understanding that amounts received by a claimant from the Vaccine Trust Fund constitute damages received on account of personal injuries or sickness for purposes of the exclusion from gross income provided by the general rules of section 104(a)(2).

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203 In most State proceedings, significant issues arise whether injuries suffered by an individual after immunization were, in fact, caused by the vaccine administered and whether the manufacturer was at fault in either the manufacture or marketing of the vaccine.

204 Title III, P.L. 99–660. This Act preempts State tort law to a limited extent by imposing limits on recovery from vaccine manufacturers. Among the limitations are a prohibition on compensation if the injury or death resulted from side effects that were unavoidable; a presumption that manufacturers are not negligent in manufacturing or marketing vaccines if they complied, in all material respects, with Federal Food and Drug Administration requirements; and limits on punitive damage awards.

205 The committee intends that the Secretary of the Treasury expeditiously (within 60 days of enactment) adopt rules for purposes of Code section 4221 for determining the conditions under which exported vaccines to be administered to individuals not eligible for compensation under the program are not subject to tax.

H.R. REP. 103-111, H.R. Rep. No. 111, 103RD Cong., 1ST Sess. 1993, 1993 WL 181528, 1993 U.S.C.C.A.N. 378 (Leg.Hist.)

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