Public Law 101-508
101st Congress

An Act

Nov. 5, 1990
[H.R. 5835]

To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Omnibus Budget Reconciliation Act of 1990.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1990".

SEC. 2. TABLE OF TITLES.

Agricultural Reconciliation Act of 1990.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

7 USC 1421 note.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

ENROLLMENT ERRATA

Pursuant to the provisions of H.J. Res. 682, waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress, and providing for the subsequent preparation and certification of printed enrollments, this printed enrollment contains corrections in indentation, typeface, and type size and includes footnotes identifying obvious errors in spelling or punctuation in the hand enrollment.

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*Note: For information on the printing of this law and a related Presidential memorandum, see the editorial note at the end.

Subtitle A—Commodity Programs

SEC. 1101. TRIPLE BASE FOR DEFICIENCY PAYMENTS.

(a) WHEAT.—Section 107B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent". 7 USC 1445b-3a.

(b) FEED GRAINS.—Section 105B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent". 7 USC 1444f.

(c) UPLAND COTTON.—Section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent". 7 USC 1444-2.

(d) RICE.—Section 101B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent". 7 USC 1441-2.

SEC. 1102. CALCULATION OF DEFICIENCY PAYMENTS BASED ON 12-MONTH AVERAGE.

(a) WHEAT.—Clause (ii) of section 107B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 10 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the crop of wheat.".

(b) FEED GRAINS.—Clause (ii) of section 105B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of corn, grain sorghums, oats, and barley shall be the amount by which the established price for the respective crop of feed grains exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 7 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the respective crop of feed grains.".

7 USC 1441-2.

(c) RICE.—Clause (ii) of section 101B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of rice shall be the amount by which the established price for the crop of rice exceeds the higher of—

"(I) the lesser of—

"(aa) the national average market price received by producers during the calendar year that contains the first 5 months of the marketing year for the crop, as determined by the Secretary; or

"(bb) the national average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus an appropriate amount that is fair and equitable in relation to wheat and feed grains (as determined by the Secretary); or

"(II) the loan level determined for the crop.".

7 USC 1445j.

(d) CONFORMING AMENDMENT.—Section 114(c) of the Agricultural Act of 1949 (as amended by section 1121(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 and redesignated by section 1161(a)(1) of such Act) by striking "wheat, feed grains, and rice which payments are calculated on the basis of the national weighted average market price (or, in the case of rice, the national average market price) for the marketing year for the crop" and inserting "wheat and feed grains which payments are calculated as provided in sections 107B(c)(1)(B)(ii), 107B(p), or 105B(c)(1)(B)(ii)".

SEC. 1103. ACREAGE REDUCTION PROGRAM FOR 1991 CROP.

7 USC 1445b-3a note.

(a) WHEAT.—In the case of the 1991 crop of wheat, the Secretary of Agriculture shall provide for an acreage limitation program as described in section 107B(e)(1)(F) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990).

7 USC 1444f.

(b) FEED GRAINS.—Subparagraph (F) of section 105B(e)(1) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(F) ACREAGE LIMITATION PROGRAM FOR 1991 CROP.—In the case of the 1991 crop of corn, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7.5 percent.".

SEC. 1104. ACREAGE REDUCTION PROGRAMS FOR 1992 THROUGH 1995 CROPS.

7 USC 1445-3a note.

(a) IN GENERAL.—Notwithstanding any other provision of law, except as provided in subsections (b) and (c), the Secretary of Agriculture shall announce an acreage limitation program for each of the 1992 through 1995 crops of—

(1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by—

(A) in the case of the 1992 crop of wheat, not less than 6 percent;

(B) in the case of the 1993 crop of wheat, not less than 5 percent;

(C) in the case of the 1994 crop of wheat, not less than 7 percent; and

(D) in the case of the 1995 crop of wheat, not less than 5 percent; and

(2) corn, grain sorghum, and barley under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7½ percent.

(b) STOCKS-TO-USE RATIO.—Subsection (a) shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than—

(1) in the case of wheat, 34 percent; and

(2) in the case of corn, grain sorghum, and barley, 20 percent.

(c) TERMINATION.—If the Secretary determines that the quantity of soybeans on hand in the United States on the first day of the marketing year for the 1991 crop of soybeans (not including any quantity of soybeans of the 1991 crop) will be less than 325,000,000 bushels, subsection (a) shall not apply to any of the 1992 through 1995 crops of wheat and feed grains.

SEC. 1105. LOAN ORIGINATION FEES AND OTHER SAVINGS.

(a) OILSEEDS.—Section 205 of the Agricultural Act of 1949 (as added by section 701(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended— 7 USC 1446f.

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

"(m) LOAN ORIGINATION FEE.—

"(1) LOANS.—The Secretary shall charge a producer a loan origination fee for a crop of oilseeds, in connection with making a loan, equal to the product obtained by multiplying—

"(A) the loan level determined for the crop under subsection (c); by

"(B) 2 percent; by

"(C) the quantity of oilseeds for which the producer obtains the loan.

"(2) LOAN DEFICIENCY PAYMENTS.—The Secretary shall deduct, from the amount of any loan deficiency payment made under subsection (e), an amount equal to the amount of the loan origination fee that would otherwise be paid under paragraph (1) if the producer obtained a loan rather a loan deficiency payment.".

(b) PEANUTS.—

7 USC 1445c-3.

(1) IN GENERAL.—Section 108B of the Agricultural Act of 1949 (as added by section 806 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(A) by redesignating subsection (g) as subsection (h); and

(B) by inserting after subsection (f) the following new subsection:

"(g) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall provide, by regulation, for a nonrefundable marketing assessment applicable to each of the 1991 through 1995 crops of peanuts. The assessment shall be made in accordance with this subsection and shall be on a per pound basis in an amount equal to 1 percent of the national average quota or additional peanut support rate per pound, as applicable, for the applicable crop. No peanuts shall be assessed more than 1 percent of the applicable support rate under this subsection.

"(2) FIRST PURCHASERS.—

"(A) IN GENERAL.—Except as provided under paragraphs (3) and (4), the first purchaser of peanuts shall—

"(i) collect from the producer a marketing assessment equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired;

"(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired; and

"(iii) remit the amounts required under clauses (i) and (ii) to the Commodity Credit Corporation in a manner specified by the Secretary.

"(B) DEFINITION.—For purposes of this subsection, the term 'first purchaser' means a person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to the Commodity Credit Corporation, such term means the person acquiring the peanuts from the Commodity Credit Corporation.

"(3) OTHER PRIVATE MARKETINGS.—In the case of a private marketing by a producer directly to a consumer through a retail or wholesale outlet or in the case of a marketing by the producer outside of the continental United States, the producer shall be responsible for the full amount of the assessment and shall remit the assessment by such time as is specified by the Secretary.

"(4) LOAN PEANUTS.—In the case of peanuts that are pledged as collateral for a price support loan made under this section, ½ of the assessment shall be deducted from the proceeds of the loan. The remainder of the assessment shall be paid by the first purchaser of the peanuts. For purposes of computing net gains on peanuts under this section, the reduction in loan proceeds shall be treated as having been paid to the producer.

"(5) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of peanuts involved in the violation; by

"(B) the national average quota peanut price support level for the applicable crop year.

"(6) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(2) CONFORMING AMENDMENT.—Section 108B(a)(2) of the Agricultural Act of 1949 (as added by section 806(3) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by inserting after "cost of land" the following: "and the cost of any assessments required under subsection (g)". 7 USC 1445c-3.

(c) SUGAR.—Section 206 of the Agricultural Act of 1949 (as added by section 901(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended— 7 USC 1446g.

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) SUGARCANE.—Effective only for each of the 1991 through 1995 crops of sugarcane, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar processed by the processor from domestically produced sugarcane.

"(2) SUGAR BEETS.—Effective only for each of the 1991 through 1995 crops of sugar beets, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .193 cents per pound of beet sugar processed by the processor from domestically produced sugar beets.

"(3) COLLECTION.—Marketing assessments required under this subsection shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary and shall be nonrefundable.

"(4) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of cane sugar or beet sugar involved in the violation; by

"(B) the support level for the applicable crop of sugarcane or sugar beets.

"(5) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(d) HONEY.—Section 207 of the Agricultural Act of 1949 (as added by section 1001 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended— 7 USC 1446h.

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey (as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602)) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment on a per pound

basis in an amount equal to 1 percent of the national price support level for each such crop as otherwise provided in this section.

"(2) COLLECTION.—The assessment shall be collected and remitted by the first handler of honey in the manner prescribed by the Secretary which, to the extent practicable, shall be as provided for in the Honey Research, Promotion, and Consumer Information Act.

"(3) EXEMPTIONS.—All persons who are exempt from the payment of the assessment authorized by such Act, and all imported honey, shall be exempt from the payment of the assessment required by this subsection.

"(4) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of honey involved in the violation; by

"(B) the support level for the applicable crop of honey.

"(5) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(e) WOOL AND MOHAIR.—Section 704 of the National Wool Act of 1954 (7 U.S.C. 1783) (as amended by section 201(b) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by adding at the following new subsection:

"(c) MARKETING ASSESSMENTS.—Effective only for each of the 1991 through 1995 marketing years for wool and mohair, the Secretary shall deduct an amount from the payment to be made available to producers of wool and mohair under subsection (a) equal to 1 percent of the payment.".

(f) TOBACCO.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following new subsection:

"(g)(1) Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available under this Act, producers and purchasers of such tobacco shall each remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in this section.

"(2) Such producer assessments and purchaser assessments shall be—

"(A) collected in the same manner as provided for in section 106A(d)(2) or 106B(d)(3), as applicable; and

"(B) enforced in the same manner as provided in section 106A(h) or 106B(j), as applicable.

"(3) The Secretary may enforce this subsection in the courts of the United States.".

7 USC 1446e.

(g) OTHER SAVINGS.—Section 204 of the Agricultural Act of 1949 (as added by section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in subsection (g)—

(A) in paragraph (1), by striking "1991 through 1994" and inserting "1992 through 1995";

(B) in the matter preceding subparagraph (A) of paragraph (2)—

(i) by inserting after "purchases" the following: "in the following calendar year"; and

(ii) by inserting after "producers" the following: "in such following calendar year"; and

(C) in paragraph (2)(B), by striking "that calendar year" and inserting "such following calendar year";

(2) by redesignating subsections (h) and (i) as subsections (j) and (k), respectively; and

(3) by inserting after subsection (g) the following new subsections:

"(h) REDUCTION IN PRICE RECEIVED.—

"(1) IN GENERAL.—Beginning January 1, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under subsection (g).

"(2) AMOUNT.—The amount of the reduction under paragraph (1) in the price received by producers shall be—

"(A) during calendar year 1991, 5 cents per hundredweight of milk marketed; and

"(B) during each of the calendar years 1992 through 1995, 11.25 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of each of the calendar years 1992 through 1995 by an amount per hundredweight that is necessary to compensate for refunds made under paragraph (3) on the basis of marketings in the previous calendar year.

"(3) REFUND.—The Secretary shall provide a refund of the entire reduction under paragraph (2) in the price of milk received by a producer during a calendar year, if the producer provides evidence that the producer did not increase marketings in the calendar year that such reduction was in effect when compared to the immediately preceding calendar year.

"(i) ENFORCEMENT.—

"(1) COLLECTION.—Reductions in price required under subsection (g) or (h) shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary.

"(2) PENALTIES.—If any person fails to collect or remit the reduction required by subsection (g) or (h) or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out such subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of milk involved in the violation; by

"(B) the support rate for the applicable calendar year for milk.

"(3) ENFORCEMENT.—The Secretary may enforce subsection (g) or (h) in the courts of the United States.".

Subtitle B—Other Agricultural Programs

SEC. 1201. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by adding at the end the following new section:

7 USC 940d.

"SEC. 314. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

"(a) IN GENERAL.—Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, insured loans may be made in accordance with this title from the Rural Electrification and Telephone Revolving Fund established under section 301 in amounts equal to the following levels:

"(1) For fiscal year 1991, $896,000,000.
"(2) For fiscal year 1992, $932,000,000.
"(3) For fiscal year 1993, $969,000,000.
"(4) For fiscal year 1994, $1,008,000,000.
"(5) For fiscal year 1995, $1,048,000,000.

"(b) REDUCTION.—Notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, the Administrator shall—

"(1) reduce the amounts otherwise made available for insured loans made from the Rural Electrification and Telephone Revolving Fund by—

"(A) $224,000,000 for fiscal year 1991;
"(B) $234,000,000 for fiscal year 1992;
"(C) $244,000,000 for fiscal year 1993;
"(D) $256,000,000 for fiscal year 1994; and
"(E) $267,000,000 for fiscal year 1995; and

"(2) use the funds made available from such reductions in each fiscal year to guarantee loans under subsection (d).

"(c) MANDATORY LEVELS.—Notwithstanding any other provision of law, the Administrator shall make insured loans at the levels authorized by this section for each of fiscal years 1991 through 1995 taking into account any reductions under subsection (b).

"(d) GUARANTEED LOANS—

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (e) and notwithstanding any other provision of law, in carrying out this Act, the Administrator shall guarantee loans made by legally organized lending agencies to the extent of the reduction in insured loans as provided in subsection (b).

"(2) AMOUNT OF GUARANTEE.—The guarantees authorized under paragraph (1) shall be 90 percent of the principal of and interest on the loan and shall be made only upon the request of the borrower.

"(3) NO FEDERAL INSTRUMENTALITY.—The Administrator may not provide any such guarantee for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States other than banks for cooperatives.

"(4) AUTHORITY.—The Administrator is authorized to approve such guarantees subject to full use being made during each fiscal year of insured loan amounts made available during the fiscal year.

"(5) CONSTRUCTION.—Nothing in this subsection shall be construed as modifying the authority provided in section 306.

"(e) IMPLEMENTATION.—

"(1) IN GENERAL.—The Administrator shall implement the reduction in insured loans provided by subsection (b) in a manner that will lessen its adverse effect.

"(2) ALLOCATION BETWEEN ELECTRIC AND TELEPHONE PROGRAMS.—The reductions required by subsection (b) shall be allocated between the electric and telephone programs for each fiscal year in proportion to the amount of insured funds made available for each such program during the fiscal year in annual appropriations Acts.

"(3) ELECTRIC BORROWER'S OPTION.—If the amount of an insured electric loan is reduced as a result of the requirements of subsection (b), the electric borrower may, at the option of such borrower, obtain capital to replace the amount of the reduction—

"(A) with the assistance of a loan guarantee (as provided by subsection (d));

"(B) from internally generated funds of the electric borrower;

"(C) from private credit sources with a lien accommodation provided by the Administrator; or

"(D) from other private sources.".

SEC. 1202. AUTHORIZATION LEVELS FOR FmHA LOANS.

(a) IN GENERAL.—Subsection (b) of section 346 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1994(b)) is amended to read as follows:

"(b)(1) For each of the fiscal years 1991 through 1995, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, from the Agricultural Credit Insurance Fund established under section 309 in amounts equal to the following levels:

"(A) For fiscal year 1991, $4,175,000,000, of which not less than $827,000,000 shall be for farm ownership loans under subtitle A.

"(B) For fiscal year 1992, $4,343,000,000, of which not less than $861,000,000 shall be for farm ownership loans under subtitle A.

"(C) For fiscal year 1993, $4,516,000,000, of which not less than $895,000,000 shall be for farm ownership loans under subtitle A.

"(D) For fiscal year 1994, $4,697,000,000, of which not less than $931,000,000 shall be for farm ownership loans under subtitle A.

"(E) For fiscal year 1995, $4,885,000,000, of which not less than $968,000,000 shall be for farm ownership loans under subtitle A.

"(2) Subject to paragraph (3), such amounts set forth in paragraph (1) shall be apportioned as follows:

"(A) For fiscal year 1991—

"(i) $1,019,000,000 for insured loans, of which not less than $83,000,000 shall be for farm ownership loans; and

"(ii) $3,156,000,000 for guaranteed loans, of which not less than $744,000,000 shall be for guarantees of farm ownership loans.

"(B) For fiscal year 1992—

"(i) $1,060,000,000 for insured loans, of which not less than $87,000,000 shall be for farm ownership loans; and

"(ii) $3,283,000,000 for guaranteed loans, of which not less than $774,000,000 shall be for guarantees of farm ownership loans.

"(C) For fiscal year 1993—

"(i) $1,102,000,000 for insured loans, of which not less than $90,000,000 shall be for farm ownership loans; and

"(ii) $3,414,000,000 for guaranteed loans, of which not less than $805,000,000 shall be for guarantees of farm ownership loans.

"(D) For fiscal year 1994—

"(i) $1,147,000,000 for insured loans, of which not less than $94,000,000 shall be for farm ownership loans; and

"(ii) $3,550,000,000 for guaranteed loans, of which not less than $837,000,000 shall be for guarantees of farm ownership loans.

"(E) For fiscal year 1995—

"(i) $1,192,000,000 for insured loans, of which not less than $97,000,000 shall be for farm ownership loans; and

"(ii) $3,693,000,000 for guaranteed loans, of which not less than $871,000,000 shall be for guarantees of farm ownership loans.

"(3) Notwithstanding any other provision of law:

"(A) The Secretary shall—

"(i) reduce the amounts otherwise made available for insured loans by—

"(I) $482,000,000, for fiscal year 1991;

"(II) $614,000,000, for fiscal year 1992;

"(III) $760,000,000, for fiscal year 1993;

"(IV) $859,000,000, for fiscal year 1994; and

"(V) $907,000,000, for fiscal year 1995; and

"(ii) use the funds made available from such reductions in each fiscal year to guarantee loans under section 351.

"(B) The total amount of insured loans shall bear the same ratio to the amount of insured farm ownership loans as the dollar amount specified in paragraph (2)(A)(i) for insured loans bears to the dollar amount specified therein for insured farm ownership loans.

"(C) If more than 70 percent of the number of loans guaranteed under section 351 in a fiscal year have been guaranteed to persons to whom the Secretary had not previously made an insured loan under this Act, in lieu of the dollar amounts specified in subparagraph (A) for the immediately succeeding fiscal year, the dollar amounts which shall apply shall each be the product obtained by multiplying—

"(i) such dollar amount; by

"(ii) the quotient of—

"(I) the number of persons provided with guaranteed loans under section 351 in the fiscal year to whom the Secretary had not previously made an insured or a guaranteed loan under this Act; divided by

"(II) the total number of persons provided with guaranteed loans under section 351 in the fiscal year.

"(4) Notwithstanding subsection (a), the Secretary shall, as soon as practicable after the date of enactment of this subsection, make, insure, or guarantee loans at the levels authorized by this subsection for each of the fiscal years 1991 through 1995.".

(b) INTEREST RATE REDUCTION PROGRAM.—

(1) IN GENERAL.—Section 351 of such Act (7 U.S.C. 1999) is amended—

(A) in subsection (c)—

(i) by striking "50 percent" and inserting "100 percent"; and

(ii) by striking "2 percent" and inserting "4 percent"; and

(B) in subsection (d), by striking ", or 3 years, whichever is less".

(2) EXTENSION OF PROGRAM FOR 2 YEARS.—Section 1320 of the Food Security Act of 1985 (7 U.S.C. 1999 note) is amended by striking "1993" and inserting "1995".

(c) DEMONSTRATION PROJECT FOR PURCHASE OF SYSTEM LAND.—Section 351(h)(1) of such Act (7 U.S.C. 1999(h)(1)) is amended by striking "3-year" and inserting "4-year".

SEC. 1203. APHIS INSPECTION USER FEE ON INTERNATIONAL PASSENGERS.

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended— 21 USC 136a.

(1) in paragraph (1), by striking "a commercial vessel, commercial aircraft, commercial truck, or railroad car," and inserting "an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car."; and

(2) in paragraph (3)(B)—

(A) by adding at the end of clause (ii) the following: "Any such reimbursement shall be subject to appropriations under clause (v)."; and

(B) by adding at the end the following new clause:

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated each fiscal year amounts in the Fund for use for quarantine or inspection services.".

SEC. 1204. ADDITIONAL SAVINGS AND OTHER PROVISIONS.

(a) INTEGRATED FARM MANAGEMENT PROGRAM.—Section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended— 7 USC 5822.

(1) in subsection (d), by striking "enroll not more than" and inserting "enroll not less than"; and

(2) in subsection (h)(7)(A), by striking "shall not be eligible" and inserting "shall be eligible".

(b) FOOD AID ASSISTANCE.—The Agricultural Trade, Development, and Assistance Act of 1954 (as amended by section 1512 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in section 202(e)(1), by striking "private" and all that follows through "Administrator" and inserting "the Administrator, not less than $10,000,000, and not more than $13,500,000, shall be made available in each fiscal year to private voluntary organizations and cooperatives"; 7 USC 1722.

(2) in section 406, by adding at the end the following new subsection: 7 USC 1736.

"(d) AVAILABILITY OF FUNDS.—Funds shall be available under this Act only to the extent provided in advance in appropriation Acts."; and

(3) in section 407(c)(4), by striking "providing ocean" and inserting "providing ocean transportation or". 7 USC 1736a.

(c) TOBACCO PROGRAM ADJUSTMENT.—Section 213 of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is amended—

(1) in subsection (d), by inserting before the period the following: ", subsection (e), and subsection (f)"; and

(2) in subsection (f), by adding at the end the following new paragraph:

"(4) Subsection (d) shall apply with respect to fees and charges imposed to cover the costs of such end user identification, certification, and reporting activities.".

7 USC 1421 note.

(d) EMERGENCY LOANS.—Section 2269 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by—

(1) striking "(7 U.S.C. 1981(b))" and inserting "(7 U.S.C. 1961(b))"; and

(2) striking "1988" and inserting "1990".

7 USC 136w note.

(e) FIFRA USER FEES.—Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990, nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

Subtitle C—Effective Date

7 USC 511r note.

SEC. 1301. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 1 day after the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990, or December 1, 1990, whichever is earlier.

7 USC 1421 note.

SEC. 1302. READJUSTMENT OF SUPPORT LEVELS.

(a) FAILURE TO ENTER INTO AGREEMENT.—If by June 30, 1992, the United States does not enter into (within the context of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902)) an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), agricultural acreage limitation and price support and production adjustment programs and export promotion levels shall be reconsidered and adjusted by the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") in accordance with subsection (b), as appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(b) REQUIRED MEASURES.—Pursuant to subsection (a), in order to protect the interests of American agricultural producers and ensure the competitive position of United States agriculture, the Secretary—

(1) is authorized to waive any minimum level for any acreage limitation program required or authorized for any of the 1993 through 1995 crops of wheat, feed grains, upland cotton, or rice established under section 107B(e), 105B(e), 103B(e), or 101B(e) of the Agricultural Act of 1949 (as amended by sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade Act of 1990), respectively;

(2) shall increase by $1,000,000,000 for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs authorized under the Agricultural Trade Act of 1978 (as amended by section 1531 of the Food,

Agriculture, Conservation, and Trade Act of 1990), in addition to any amounts otherwise required or made available under such programs; and

(3) shall permit producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(c) FAILURE OF AGREEMENT TO ENTER INTO FORCE.—If by June 30, 1993, an agricultural trade agreement under the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade has not entered into force for the United States, agricultural price support and other programs and export promotion levels shall be reconsidered and adjusted by the Secretary in accordance with subsection (d), if the Secretary determines such action is appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(d) SPECIFIC MEASURES.—

(1) MEASURES TO BE CONSIDERED.—Pursuant to subsection (c), the Secretary shall consider—

(A) waiving all or part of the requirements of this title, and the amendments made by this title, requiring reductions in agricultural spending;

(B) increasing the level of funds made available for the programs authorized under the Agricultural Trade Act of 1978; and

(C) permitting producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(2) AUTHORITY.—The Secretary is authorized to implement the measures specified in subparagraphs (A), (B), and (C) of paragraph (1). This authority shall be in addition to, and not in place of, any other authority under any other provision of law.

(3) IMPLEMENTATION.—If the Secretary determines the action is appropriate pursuant to subsection (c), the Secretary shall implement measures specified in subparagraph (A) of paragraph (1) and either or both of the measures specified in subparagraph (B) or (C) of paragraph (1).

(e) LIMITATION.—This section shall not be construed to authorize the Secretary to reduce the level of income support provided to agricultural producers in the United States.

(f) TERMINATION.—The provisions of subsections (a) and (b) shall cease to be effective if the President certifies to Congress that the failure referred to in subsection (a) to enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the GATT is a result in whole or in part of the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191), or essentially similar provisions, not applying or in effect not applying during the period ending May 31, 1991 (or during the period June 1, 1991, through May 31, 1993, if the condition of section 1103(b)(1)(B)(i) is satisfied) to implementing bills submitted with respect to such an agreement entered into during the applicable period under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(b)).

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

Subtitle B—FHA Mortgage Insurance

Subtitle C—Auction of Federally Insured Mortgages

Subtitle D—Crime and Flood Insurance Programs

Subtitle E—Effective Date

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

FDIC Assessment Rate Act of 1990.

12 USC 1811 note.

SEC. 2001. SHORT TITLE.

This Act may be cited as the "FDIC Assessment Rate Act of 1990".

SEC. 2002. FDIC AUTHORIZED TO INCREASE ASSESSMENT RATES AS NECESSARY TO PROTECT INSURANCE FUNDS.

(a) BANK INSURANCE FUND.—Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended to read as follows:

"(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

"(I) to maintain the reserve ratio at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and

capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.".

(b) SAVINGS ASSOCIATION INSURANCE FUND.—Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)) is amended to read as follows:

"(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

"(I) to maintain the reserve ratio at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Savings Association Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.

"(iv) TRANSITION RULE.—Until December 31, 1997, the assessment rate for Savings Association Insurance Fund members shall not be less than the following:

"(I) From January 1, 1990, through December 31, 1990, 0.208 percent.

"(II) From January 1, 1991, through December 31, 1993, 0.23 percent.

"(III) From January 1, 1994, through December 31, 1997, 0.18 percent.".

(c) CLERICAL AMENDMENTS REFLECTING $1,000 MINIMUM ASSESSMENT PROVISIONS OF CURRENT LAW.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended—

(1) by inserting "or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1)" after "subsection (c)(2)"; and

(2) in clauses (i) and (ii), by inserting "the greater of $500 or an amount" before "equal to the product of".

SEC. 2003. FDIC AUTHORIZED TO MAKE MID-YEAR ADJUSTMENTS IN ASSESSMENT RATES.

(a) ASSESSMENT RATES.—Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended to read as follows:

"(A) ASSESSMENT RATES PRESCRIBED.—

"(i) AUTHORITY TO SET RATES.—Subject to clause (iii), the Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in its sole discretion, determines to be appropriate.

"(ii) RATE FOR EACH FUND TO BE SET INDEPENDENTLY.—The Corporation shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members.

"(iii) DEADLINE FOR ANNOUNCING RATE CHANGES.—The Corporation shall announce any change in assessment rates.—

"(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

(b) ASSESSMENT PROCEDURES.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)), as amended by section 2(c) of this Act, is amended—

(1) by striking "annual" each time it appears;

(2) in clause (i)(I), by inserting "during that semiannual period" after "member"; and

(3) in clause (ii)(I), by inserting "during that semiannual period" after "member".

(c) CONFORMING AMENDMENT ON TIMING OF ASSESSMENT CREDITS.—Section 7(d)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)(A)) is amended to read as follows:

"(A) The Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions—

"(i) in the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(ii) in the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

SEC. 2004. FDIC AUTHORIZED TO SET DESIGNATED RESERVE RATIO AS NECESSARY IN FACE OF SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO INSURANCE FUND.

Section 7(b)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(B)) is amended—

(1) by striking ", not exceeding 1.50 percent," each time it appears;

(2) in clause (iii)—

(A) by inserting "and" at the end of subclause (I);

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II); and

(3) in clause (iv)—

(A) by inserting "and" at the end of subclause (I);

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II).

SEC. 2005. FDIC AUTHORIZED TO BORROW FROM FEDERAL FINANCING BANK.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) in the heading, by striking "SEC. 14." and inserting:

"SEC. 14. BORROWING AUTHORITY.

"(a) BORROWING FROM TREASURY.—";

(2) in subsection (a), as designated by paragraph (1)—

(A) by striking "this section" each time it appears and inserting "this subsection", and

(B) by striking "The Corporation may employ such funds" and inserting "The Corporation may employ any funds obtained under this section"; and

(3) by adding after subsection (a), as amended by paragraph (2), the following new subsection:

"(b) BORROWING FROM FEDERAL FINANCING BANK.—The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or Savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.".

Subtitle B—FHA Mortgage Insurance

SEC. 2101. INCREASE IN MORTGAGE LIMIT.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by striking "150 percent (185 percent until October 31, 1990) of the dollar amount specified" and inserting the following: "185 percent of the dollar amount specified".

SEC. 2102. MORTGAGOR EQUITY.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by adding at the end the following new undesignated paragraph:

"Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term 'appraised value' means the amount set forth in the written statement required under section 226, or a similar amount determined by the Secretary if section 226 does not apply.".

SEC. 2103. MORTGAGE INSURANCE PREMIUMS.

(a) PREMIUMS.—Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking the last sentence; and

(3) by adding at the end the following new paragraph:

"(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling and executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, shall be subject to the following requirements:

"(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount equal to

2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

"(B) In addition to the premium under subparagraph (A), the Secretary shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) for the following periods:

"(i) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

"(ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).".

12 USC 1709 note.

(b) TRANSITION PROVISIONS.—Notwithstanding section 203(c) of the National Housing Act (as amended by subsection (a)), mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 and that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) 1991 AND 1992.—For mortgages executed during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) 1993 AND 1994.—For mortgages executed during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

(3) REFUNDS.—With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(c) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of this Act. 12 USC 1709 note.

SEC. 2104. MUTUAL MORTGAGE INSURANCE FUND DISTRIBUTIONS.

Section 205 of the National Housing Act (12 U.S.C. 1711) is amended by adding at the end the following new subsection:

"(e) In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.".

SEC. 2105. ACTUARIAL SOUNDNESS OF MUTUAL MORTGAGE INSURANCE FUND.

Section 205 of the National Housing Act (12 U.S.C. 1711), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

"(f)(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent

within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter, subject to paragraph (2).

"(2) The Secretary shall endeavor to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after the date of the enactment of this subsection, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

"(3) Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

"(4) For purposes of this subsection:

"(A) The term 'capital' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

"(B) The term 'capital ratio' means the ratio of capital to unamortized insurance-in-force.

"(C) The term 'economic net worth' means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

"(D) The term 'unamortized insurance-in-force' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

"(g) The Secretary shall provide for an independent actuarial study of the Mutual Mortgage Insurance Fund to be conducted annually and shall report annually to the Congress regarding the financial status of the Fund.

"(h)(1) If, pursuant to the independent annual actuarial study of the Mutual Mortgage Insurance Fund required under subsection (g), the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals under paragraph (2), the Secretary may not issue distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums under section 203(c) or section 2103(b) of the Omnibus Budget Reconciliation Act of 1990. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary shall immediately notify Congress of the proposed change and the reasons for the change. Any such premium change shall not take effect before the expiration of the 90-day period beginning upon such notification.

"(2) The operational goals referred to in paragraph (1) shall be—

"(A) maintaining an adequate capital ratio;

"(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit;

"(C) minimizing the risk to the Fund and to homeowners from homeowner default; and

"(D) avoiding adverse selection.".

SEC. 2106. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) TERMINATION DATE.—The first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) NUMBER OF MORTGAGES INSURED.—Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking the second sentence and inserting the following: "The total number of mortgages insured under this section may not exceed 25,000.".

Subtitle C—Auction of Federally Insured Mortgages

SEC. 2201. AUCTION OF MULTIFAMILY MORTGAGES.

Section 221(g)(4) of the National Housing Act (12 U.S.C. 1715l(g)(4)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the (I) mortgage loans, or (II) participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary (in this subparagraph referred to as 'participation certificates'). The Secretary shall arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (iii).

"(ii)(I) The Secretary shall conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage securing the credit instrument.

"(II) A mortgagee who elects to assign a mortgage shall provide the Secretary and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, which shall include the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable Federal subsidies, and any other information determined by the Secretary to be appropriate. The Secretary shall also provide information regarding the status of the property with respect to the provisions of the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act with respect to eligibility to prepay the mortgage, a statement of whether the owner has filed a notice of intent to prepay or a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, and the details with respect to incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act in lieu of exercising prepayment rights.

"(III) The Secretary shall, upon receipt of the information in subclause (II), promptly advertise for an auction and publish such mortgage descriptions in advance of the auction. The Secretary may conduct the auction at any time during the 6-month period beginning upon receipt of the information in subclause (II) but under no circumstances

may the Secretary conduct an auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to the Secretary.

"(IV) In any auction under this subparagraph, the Secretary shall accept the lowest interest rate bid for purchase that the Secretary determines to be acceptable. The Secretary shall cause the accepted bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 business days after the date winning bidders are selected in the auction, unless the Secretary determines that extraordinary circumstances require an extension (not to exceed 60 days) of the period.

"(V) If no bids are received, the bids that are received are not acceptable to the Secretary, or settlement does not occur within the period under subclause (IV), the mortgagee shall retain all rights (including the right to interest, at a rate to be determined by the Secretary, for the period covering any actions taken under this subparagraph) under this section to assign the mortgage loan to the Secretary.

"(iii) As part of the auction process, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser under the auction of the original credit instrument or the mortgage securing the credit instrument (and any subsequent holders or assigns who are approved mortgagees). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan or participation certificates (less the servicing fee, if appropriate) for the then unpaid principal balance plus accrued interest at a rate determined by the Secretary. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the earlier of—

"(I) the maturity date of the loan;

"(II) prepayment of the mortgage loan in accordance with the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, where applicable; or

"(III) default and full payment of insurance benefits on the mortgage loan by the Federal Housing Administration.

"(iv) The Secretary shall require that the mortgage loans or participation certificates presented for assignment are auctioned as whole loans with servicing rights released and also are auctioned with servicing rights retained by the current servicer.

"(v) To the extent practicable, the Secretary shall encourage State housing finance agencies, nonprofit organizations, and organizations representing the tenants of the property securing the mortgage, or a qualified mortgagee participating in a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act to participate in the auction.

"(vi) The Secretary shall implement the requirements imposed by this subparagraph within 30 days from the date

of enactment of this subparagraph and not be subject to the requirement of prior issuance of regulations in the Federal Register. The Secretary shall issue regulations implementing this section within 6 months of the enactment of this subparagraph.

"(vii) Nothing in this subparagraph shall diminish or impair the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, if any, or other agreements for the provision of Federal assistance to the housing or its tenants.

"(viii) This subparagraph shall not apply after September 30, 1995. Not later than January 31 of each year (beginning in 1992), the Secretary shall submit to the Congress a report including statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program under this subparagraph, the ability of the Secretary to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, and the costs and benefits derived from the program for the Federal Government.".

Subtitle D—Crime and Flood Insurance Programs

SEC. 2301. CRIME INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by striking "September 30, 1991" in the matter preceding paragraph (1) and inserting "September 30, 1995".

(b) CONTINUATION OF EXISTING CONTRACTS.—Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended by striking "September 30, 1992" and inserting "September 30, 1996".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb–10c note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

SEC. 2302. FLOOD INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) EXTENSION OF EMERGENCY PROGRAM.—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(d) EXTENSION OF EROSION PROVISIONS.—Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is

amended by striking "September 30, 1991" and inserting "September 30, 1995".

(e) INCLUSION OF COSTS IN PREMIUMS.—

(1) ESTIMATES OF PREMIUM RATES.—Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended—

(A) in paragraph (1)(B)(i), by striking "and" at the end;

(B) in paragraph (1)(B)(ii), by inserting "and" after the comma at the end;

(C) in paragraph (1)(B), by inserting at the end the following new clause:

"(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,"; and

(D) in paragraph (2), by inserting after "title" the following: ", and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)".

(2) ESTABLISHMENT OF CHARGEABLE PREMIUM RATES.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended—

(A) in subsection (b)—

(i) by striking "and" at the end of paragraph (2);

(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2), the following new paragraph:

"(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), and"; and

(B) by striking subsection (d) and inserting the following new subsection:

"(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310.".

(3) NATIONAL FLOOD INSURANCE FUND.—Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended to read as follows:

"(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain

management programs (including the costs of mapping activities under section 1360); and".

(4) ADMINISTRATIVE EXPENSES.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking "program" and all that follows and inserting the following: "and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.".

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES.—Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

42 USC 4015 note.

Subtitle E—Effective Date

SEC. 2401. EFFECTIVE DATE.

If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, the provisions of subtitles B and C (of this title) and the amendments made by such subtitles shall not take effect. This section shall apply notwithstanding any provision relating to effective date or applicability contained in subtitle B or C.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

Subtitle A—Student Loan Program Savings

Student Loan Default Prevention Initiative Act of 1990.

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Student Loan Default Prevention Initiative Act of 1990".

20 USC 1001 note.

SEC. 3002. SUPPLEMENTAL PRECLAIMS ASSISTANCE PAYMENTS.

(a) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE REIMBURSEMENTS.—Section 428(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)) is amended—

(1) in the first sentence of paragraph (1)(A), by striking ", including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)";

(2) in paragraph (6)(C)(i), by striking "this paragraph" and inserting "subsection (l)";

(3) in paragraph (6)(C)(i)(I), by striking "required or permitted under paragraph (2)(A) of this subsection and subsection (f)" and inserting "generally comparable in intensiveness to the level of

preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990";

(4) in paragraph (6)(C)(ii)—

(A) by striking "reimbursement" and inserting "payment under subsection (l)"; and

(B) by striking "which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f)" and inserting "described in division (i)(I) of this subparagraph"; and

(5) by striking the first sentence of paragraph (6)(C)(iv).

(b) FIXED PAYMENTS FOR PRECLAIMS ASSISTANCE.—Section 428 of such Act is further amended by adding at the end thereof the following new subsection:

"(l) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE.—

"(1) ASSISTANCE REQUIRED.—Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I)) and supplemental preclaims assistance activities (as described in subsection (c)(6)(C)) with respect to each loan covered by such agreement.

"(2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE.—The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C)) on a loan guaranteed under this part. Such payments shall be equal to $50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.".

SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.

(a) AMENDMENT.—Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

"(1) FIRST YEAR STUDENTS.—The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.".

20 USC 1078-7 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES.

20 USC 1085.

(a) IN GENERAL.—Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

"(3) INELIGIBILITY BASED ON HIGH DEFAULT RATES.—(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each

of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal year 1991 and 1992; and

"(ii) 30 percent for any succeeding fiscal year.

"(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of this Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER.—Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: ", except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement".

(c) EXTENSION OF DEFAULT RATE LIMITATIONS ON SLS LOANS.—Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended— 20 USC 1078-1 note.

(1) by inserting "paragraph (1) of" after "amendments made by"; and

(2) by striking out "October 1, 1991" and inserting "October 1, 1996".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective July 1, 1991, except that the amendment made by subsection (b) shall be effective upon enactment. 20 USC 1085 note.

SEC. 3005. ABILITY TO BENEFIT.

(a) IN GENERAL.—Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

"(d) ABILITY TO BENEFIT.—In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.".

(b) CONFORMING AMENDMENT.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting ", except in accordance with section 484(d) of this Act," after "shall not".

20 USC 1088 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3006. MAXIMUM SLS LOAN AMOUNTS.

20 USC 1078-1 note.

(a) EFFECTIVE DATE EXTENSION.—Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "1991" and inserting "1996".

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS.—Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)) is amended by striking "9 consecutive" and inserting "7 consecutive".

SEC. 3007. AMENDMENTS TO BANKRUPTCY LAWS.

(a) AUTOMATIC STAY AND PROPERTY OF THE ESTATE.—(1) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (12), by striking "or" at the end thereof;

(B) in paragraph (13), by striking the period at the end thereof and inserting a semicolon; and

(C) by inserting immediately following paragraph (13) the following new paragraphs:

"(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

"(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution; or

"(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.".

(2) Section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (1), by striking "or" at the end thereof;

(B) in paragraph (2), by striking the period at the end thereof and inserting a semicolon and "or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution.".

11 USC 362 note.

(3) The amendments made by this subsection shall be effective upon date of enactment of this Act.

(b) TREATMENT OF CERTAIN EDUCATION LOANS IN BANKRUPTCY PROCEEDINGS.—(1) Section 1328(a)(2) of title 11, United States Code, is amended by striking "section 523(a)(5)" and inserting "paragraph (5) or (8) of section 523(a)".

(2) The amendment made by paragraph (1) shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act. 11 USC 1328 note.

SEC. 3008. SUNSET PROVISION. 11 USC 362 note.

The amendments made by this subtitle shall cease be effective on October 1, 1996.

Subtitle B—Labor Related Penalties

SEC. 3101. OCCUPATIONAL SAFETY AND HEALTH.

Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) in subsection (a), by striking "$10,000 for each violation" and inserting "$70,000 for each violation, but not less than $5,000 for each willful violation; [1] and

(2) in subsections (b), (c), (d), and (i), by striking "$1,000" and inserting "$7,000".

SEC. 3102. MINE SAFETY AND HEALTH.

Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended—

(1) in subsection (a), by striking "$10,000" and inserting "$50,000"; and

(2) in subsection (b), by striking "1,000" and inserting "$5,000", and [2]

SEC. 3103. FAIR LABOR STANDARDS.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) in the first sentence—

(A) by striking "or any person who repeatedly or willfully violates section 6 or 7"; and

(B) by striking "not to exceed $1,000 for each such violation" and inserting "not to exceed $10,000 for each employee who was the subject of such a violation";

(2) by inserting after the first sentence the following: "Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.",

(3) by striking "such penalty" each place the term appears except after "appropriateness of" and inserting "any penalty under this subsection", and

(4) in the last sentence, by striking "Sums" and inserting "Except for civil penalties collected for violations of section 12, sums"; and

(5) by inserting at the end the following new sentence: "Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.".

[1] So in original. Probably should be "violation";".

[2] So in original. The ", and" probably should be a period.

TITLE IV—MEDICARE, MEDICAID, AND OTHER HEALTH-RELATED PROGRAMS

Subtitle A—Medicare

SEC. 4000. REFERENCES IN SUBTITLE; TABLE OF CONTENTS.

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(b) TABLE OF CONTENTS.—The table of contents of this subtitle is as follows:

PART 1—PROVISIONS RELATING TO PART A

SEC. 4001. PAYMENTS FOR CAPITAL-RELATED COSTS OF INPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR FISCAL YEAR 1991.—Section 1886(g)(3)(A)(v) (42 U.S.C. 1395ww(g)(3)(A)(v)) is amended by striking "September 30, 1990" and inserting "September 30, 1991".

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)) is amended by adding at the end the following: "Aggregate payments made under subsection (d) and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1861(v))."

(c) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1886(g)(3)(B) is amended by striking "subsection (d)(5)(D)(iii))." and inserting "subsection (d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

SEC. 4002. PROSPECTIVE PAYMENT HOSPITALS.

(a) CHANGES IN UPDATE FACTORS.—

(1) IN GENERAL.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(A) by striking "and" at the end of subclause (V);

(B) in subclause (VI)—

(i) by striking "1991" and inserting "1994", and

(ii) by redesignating such subclause as subclause (IX); and

(C) by inserting after subclause (V) the following new subclauses:

"(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

"(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in all areas,

"(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in all areas, and".

42 USC 1395ww note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for discharges occurring on or after January 1, 1991.

(b) CHANGES IN DISPROPORTIONATE SHARE PAYMENTS.—

(1) INCREASE FOR URBAN HOSPITALS WITH MORE THAN 100 BEDS.—Section 1886(d)(5)(F)(vii) (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended—

(A) in subclause (I), by striking "greater than 20.2," and all that follows and inserting the following: "greater than 20.2—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-20.2)(.65) + 5.62,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-20.2)(.7) + 5.62,

"(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P-20.2)(.8) + 5.88, and

"(d) for discharges occurring on or after October 1, 1994, (P-20.2)(.825) + 5.88; or"; and

(B) in subclause (II), by striking "hospital, (P-15)(.6) + 2.5," and inserting the following: "hospital—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-15)(.6) + 2.5,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-15)(.6) + 2.5,

"(c) for discharges occurring on or after October 1, 1993, (P-15)(.65) + 2.5,".

(2) INCREASE FOR HOSPITALS WITH DISPROPORTIONATE INDIGENT CARE REVENUES.—Section 1886(d)(5)(F)(iii) (42 U.S.C. 1395ww(d)(5)(F)(iii)) is amended by striking "30 percent" and inserting "35 percent".

(3) REPEAL OF SUNSET.—

(A) IN GENERAL.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by striking "and before October 1, 1995," each place it appears in paragraph (2)(C)(iv) and paragraph (5)(F)(i).

(B) CONFORMING AMENDMENTS.—(A) Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)) is amended to read as follows:

"(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after May 1, 1986, is equal to 1.89 × (((1 + r) to the nth power) − 1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405.".

(B) Section 1886(d)(3)(C)(ii) (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by striking "occurring—" and all that follows and inserting the following: "occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.".

(4) NO RESTANDARDIZING FOR RECENT ADJUSTMENTS.—

(A) ADJUSTMENTS UNDER OBRA 1989.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)) is amended by striking the period at the end and inserting the following: ", except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.".

(B) ADJUSTMENTS UNDER OBRA 1990.—Section 1886(d)(2)(C)(iv), as amended by subparagraph (A), is further amended by striking "1989." and inserting "1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.".

(5) EFFECTIVE DATE.—The amendments made by paragraphs (1), (3), and (4)(B) shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989. 42 USC 1395ww note.

(c) PAYMENTS TO RURAL HOSPITALS.—

(1) PHASE-OUT OF SEPARATE AVERAGE STANDARDIZED AMOUNTS.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)), as amended by subsection (a)(1), is further amended—

(A) in subclause (VI), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area ,";

(B) in subclause (VII), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,";

(C) in subclause (VIII), by striking "in all areas, and" and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,";

(D) in subclause (IX)—

(i) by striking "1994" and inserting "1996", and

(ii) by redesignating such subclause as subclause (XI); and

(E) by inserting after subclause (VIII) the following new subclauses:

"(IX) for fiscal year 1994, the market basket percentage increase for hospitals located in a large urban or other urban area, and the market basket percentage increase plus 1.5 percentage points for hospitals located in a rural area,

"(X) for fiscal year 1995, the market basket percentage increase for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area), and".

(2) CONFORMING AMENDMENTS.—(A) Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)) is amended—

(i) in clause (ii), by striking "(A) and (E)," and inserting "(A), (C), (D), and (E),";

(ii) in subparagraphs (C)(ii) and (D)(ii), by striking "(B)(i)" each place it appears and inserting "(B)(ii)".

(B) Section 1886(d) (42 U.S.C. 1395ww(d)) is amended—

(i) in paragraph (1)(A)(iii), by striking "rural, large urban, or other urban area" and inserting "large urban or other area";

(ii) in paragraph (3)(A)—

(I) in clause (ii), by striking "the Secretary" and inserting "and ending on or before September 30, 1994, the Secretary",

(II) by redesignating clause (iii) as clause (v), and

(III) by inserting after clause (ii) the following new clauses:

"(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an other urban area.

"(iv) For discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.";

(iii) in paragraph (3)(B), by striking "for hospitals located in an urban area" and all that follows and inserting the following: "by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).";

(iv) in paragraph (3)(D)(i)—

(I) in the matter preceding subclause (I), by striking "an urban area (or," and all that follows through "area)," and inserting "a large urban area", and

(II) in subclause (I), by striking "an urban area" and inserting "a large urban area";

(v) in paragraph (3)(D)(ii), by striking "a rural area" each place it appears and inserting "other areas"; and

(vi) in paragraph (8)(D)—

(I) in the first sentence, by striking "for hospitals located in an urban area", and

(II) by striking the second sentence.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) and paragraph (2)(A) shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) shall take effect October 1, 1994. 42 USC 1395ww note.

(d) AREA WAGE INDEX.—

(1) DETERMINATION OF AREA WAGE INDEX.—(A) For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section. 42 USC 1395ww note.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

(2) STUDY OF AREA WAGE INDEX ADJUSTMENTS BASED ON PROFESSIONAL OCCUPATIONAL COMPONENT.—

(A) STUDY.—The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3)(E) of the Social Security Act.

(B) REPORT TO CONGRESS.—In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

(e) EXTENSION OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS.—

(1) IN GENERAL.—Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by striking "beginning on or after" and all that follows through "1990" and inserting "beginning on or after April 1, 1988, and ending on September 30, 1993,".

(2) STUDY.—(A) The Secretary of Health and Human Services shall collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under section 1886(d)(3) of the Social Security Act to identify the extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices. 42 USC 1395ww note.

(B) Not later than June 1, 1993, the Secretary shall submit a report to Congress analyzing such data, and shall include in such report recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

(C) The provisions of chapter 35 of title 44, United States Code, shall not apply to data collected by the Secretary under subparagraph (A).

42 USC 1395ww note.

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1990.

(f) ELIMINATION OF HOSPITAL OFF-SET FOR SERVICES OF PHYSICIAN ASSISTANTS.—

42 USC 1395x note.

(1) IN GENERAL.—Section 9338 of the Omnibus Budget Reconciliation Act of 1986 is amended by striking subsection (d).

42 USC 1395x note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(g) RESPONSIBILITIES AND REPORTING REQUIREMENTS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

(1) EXPANSION OF RESPONSIBILTIES [3].—Section 1886(e)(2) (42 U.S.C. 1395ww(e)(2)) is amended—

(A) by striking "(2)" and inserting "(2)(A)"; and

(B) by adding at the end the following new subparagraphs:

"(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this title, including recommendations relating to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospital discharges under subsection (d), adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this title.

"(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to—

"(i) trends in health care costs;

"(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this title on such condition;

"(iii) trends in the use of health care services; and

"(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.".

(2) REPORTING REQUIREMENTS FOR COMMISSION AND SECRETARY; ELIMINATION OF OTA REPORTING REQUIREMENTS.—Section 1886 (42 U.S.C. 1395ww) is amended—

(A) by striking subparagraph (D) of subsection (d)(4);

(B) in the second sentence of subsection (e)(2)(A), as amended by paragraph (1)(A), by striking "In addition" and all that follows through "the Commission" and inserting "The Commission";

(C) in subsection (e)(3)(A)—

(i) by striking "the Secretary" and inserting "Congress", and

[3] So in original. Probably should be "RESPONSIBILITIES".

(ii) by striking the period at the end and inserting the following: ", together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.";

(D) in subsection (e)(4)—

(i) by striking "(4)" and inserting "(4)(A)", and

(ii) by adding at the end the following new subparagraph:

"(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates.";

(E) in subsection (e)(5)—

(i) by striking "recommendation" each place it appears and inserting "recommendations", and

(ii) by adding at the end the following new sentence: "To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations."; and

(F) in subsection (e)(6)(G)—

(i) by striking clause (i), and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(3) CONFORMING AMENDMENT.—Section 1845(c)(1)(D) (42 U.S.C. 1395w-1(c)(1)(D)) is amended by striking "reports and".

(4) PROPAC STUDY OF MEDICAID PAYMENTS TO HOSPITALS.—

(A) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large numbers of individuals eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) REPORT.—By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for payments to hospitals under title XIX of such Act as the Commission deems appropriate.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act. 42 USC 1395ww note.

(h) PROVISIONS RELATING TO GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

(1) PAYMENTS TO RECLASSIFIED HOSPITALS.—

(A) IN GENERAL.—Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended—

(i) in clause (i), in the matter preceding subclause (I), by striking "area—" and inserting "area, or by treating hospitals located in one urban area as being located in another urban area—";

(ii) by amending clause (i)(II) to read as follows:

"(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).";

(iii) by striking clause (ii); and

(iv) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii).

42 USC 1395ww note.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to discharges occurring on or after January 1, 1991.

(2) GEOGRAPHIC CLASSIFICATION REVIEW BOARD.—

42 USC 1395ww note.

(A) DEADLINE FOR SUBMISSION OF APPLICATIONS.—For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.

(B) TECHNICAL CORRECTIONS.—Section 1886(d)(10) (42 U.S.C. 1395ww(d)(10)) is amended—

(i) in subparagraph (A), by striking "Geographical" and inserting "Geographic";

(ii) in subparagraph (B)(i)—

(I) by striking "representatives" and inserting "representative", and

(II) by striking "1 member shall be a member of the Prospective Payment Assessment Commission, and at least";

(iii) in subparagraph (B)(ii), by striking "all" and inserting "initial"; and

(iv) in subparagraph (10)(C)(iii)(II)—

(I) by striking the first 2 sentences and inserting the following: "Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5, United States Code.", and

(II) by striking "after" and inserting "after the date on which".

SEC. 4003. EXPANSION OF DRG PAYMENT WINDOW.

(a) IN GENERAL.—The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is amended by striking the period and inserting the following: ", and includes the costs of all services for which payment may be made under this title that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical

diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply— 42 USC 1395ww note.

(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act and before October 1, 1991;

(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

(3) in the case of any other services, to services furnished on or after October 1, 1991.

(c) ISSUANCE OF INTERIM FINAL REGULATION.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section. 42 USC 1395ww note.

SEC. 4004. PAYMENTS FOR MEDICAL EDUCATION COSTS. 42 USC 1395ww note.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4005. PPS-EXEMPT HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1886(b)(1)(B) (42 U.S.C. 1395ww(b)(1)(B)) is amended by striking "(ii) in the case of" and all that follows through the semicolon and inserting the following: "(ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;".

42 USC 1395ww note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1991.

42 USC 1395ww note.

(b) DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hos-

pitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) APPEALS OF TARGET AMOUNTS.—

(1) DEADLINES FOR REVIEW AND DECISION.—(A) Section 1816(f) (42 U.S.C. 1395h(f)) is amended—

(i) by striking "(1)" and "(2)" and inserting "(A)" and "(B)";

(ii) by striking "(f)" and inserting "(f)(1)"; and

(iii) by striking "Such standards and criteria" and all that follows and inserting the following:

"(2) The standards and criteria established under paragraph (1) shall include—

"(A) with respect to claims for services furnished under this part by any provider of services other than a hospital—

"(i) whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in

the case of fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days, and

"(ii) the extent to which such agency or organization's determinations are reversed on appeal; and

"(B) with respect to applications for an exemption from or exception or adjustment to the target amount applicable under section 1886(b) to a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B))—

[4]"(i) if such agency or organization receives a completed application, whether such agency or organization is able to process such application not later than 75 days after the application is filed, and

"(ii) if such agency or organization receives an incomplete application, whether such agency or organization is able to return the application with instructions on how to complete the application not later than 60 days after the application is filed.".

(B) Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended by adding at the end the following new sentence: "The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.".

(2) STANDARDS FOR ASSIGNMENT OF NEW BASE PERIOD.—Section 1886(b)(4) (42 U.S.C. 1395ww(b)(4)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

"(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

"(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

"(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.".

42 USC 1395ww note.

(3) GUIDANCE TO INTERMEDIARIES AND HOSPITALS.—The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.

42 USC 1395ww note.

(4) EFFECTIVE DATES.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendments made by paragraph (2) shall take effect as if

[4] So in original. Probably should be " "(i)".

included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4006. HOSPICE BENEFIT EXTENSION.

(a) IN GENERAL.—Section 1812 (42 U.S.C. 1395d) is amended—

(1) in subsection (a)(4), by striking "90 days each" and all that follows through "with respect to" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to"; and

(2) in subsection (d)—

(A) in paragraph (1), by striking "90 days each" and all that follows through "lifetime" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime", and

(B) in paragraph (2)(B), by striking "a 90- or 30-day period," and inserting "a 90- or 30-day period or a subsequent extension period,".

(b) CONFORMING AMENDMENT.—Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following new clause:

"(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to care and services furnished on or after January 1, 1990. 42 USC 1395d note.

SEC. 4007. FREEZE IN PAYMENTS UNDER PART A THROUGH DECEMBER 31. 42 USC 1395ww note.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act (including payments under section 1886 of such Act attributable to or allocated under such part) during the period described in subsection (b):

(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act shall be deemed to be 0.

(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.

SEC. 4008. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART A.

(a) WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES AND HOSPICES.—

(1) SKILLED NURSING FACILITIES.—The second sentence of section 9126(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "October 31, 1990" and inserting "December 31, 1995".

42 USC 1395y note.

(2) HOSPICES.—Section 9305(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "November 1, 1990" and inserting "December 31, 1995".

42 USC 1395y note.

42 USC 1395y note.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act.

(b) HOSPITAL OBLIGATIONS WITH RESPECT TO TREATMENT OF EMERGENCY MEDICAL CONDITIONS.—

(1) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by striking "knowingly" and inserting "negligently".

(2) APPLICATION OF PENALTIES TO SMALL HOSPITALS.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by inserting "(or not more than $25,000 in the case of a hospital with less than 100 beds)" after "$50,000".

(3) TERMINATION OF HOSPITAL PROVIDER AGREEMENTS.—

(A) Section 1867 (42 U.S.C. 1395dd) is further amended—

(i) by striking paragraph (1) of subsection (d),

(ii) by redesignating paragraphs (2) and (3) of subsection (d) as paragraph (1) and (2), respectively, and

(iii) in subsection (c)(2)(C), by striking "(d)(2)(C)" and inserting "(d)(1)(C)".

(B) Section 1866(a)(1)(I)(i) (42 U.S.C. 1395cc(a)(1)(I)(i)) is amended by inserting "and to meet the requirements of such section" before the comma at the end.

42 USC 1395cc note.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

42 USC 1395dd note.

(c) INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS.—

(1) STUDY.—The Secretary of Health and Human Services (acting through the Inspector General of the Department of Health and Human Services) shall conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and shall include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act relating to the examination and treatment of individuals with an emergency medical condition and women in labor.

(2) REPORT.—By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

(d) DESIGNATION OF RURAL PRIMARY CARE HOSPITALS.—

(1) PRIORITY DESIGNATIONS OF BORDER STATE HOSPITALS.—Section 1820(i)(2)(C) (42 U.S.C. 1395i-4(i)(2)(C)) is amended by adding at the end the following new sentence: "In designating facilities

as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) with a rural health network located in a State receiving a grant under subsection (a)(1).".

(2) ELIGIBILITY OF CERTAIN CLOSED HOSPITALS.—Section 1820(f)(1)(B) (42 U.S.C. 1395i-4(f)(1)(B)) is amended by striking "is a hospital," and inserting the following: "is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),".

(3) ELIGIBILITY OF URBAN HOSPITALS.—Section 1820(f)(1)(A) (42 U.S.C. 1395i-4(f)(1)(A)) is amended by striking the semicolon and inserting the following: ", or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas;".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) shall take effect on the date of the enactment of this Act. 42 USC 1395i-4 note.

(e) SKILLED NURSING FACILITY ROUTINE COST LIMITS.—

(1) IN GENERAL.—Section 6024 of the Omnibus Budget Reconciliation Act of 1989 is amended by adding at the end the following new sentence: "The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.". 42 USC 1395yy note.

(2) 2-YEAR UPDATES REQUIRED.—Section 1888(a) (42 U.S.C. 1395yy(a)) is amended in the matter following paragraph (4) by striking the period and inserting the following: ", and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989. 42 USC 1395yy note.

(f) CLARIFICATION OF EXTENSION OF WAIVER FOR FINGER LAKES AREA HOSPITAL CORPORATION.—

(1) IN GENERAL.—The second sentence of section 1886(c)(4) (42 U.S.C. 1395ww(c)(4)) is amended by striking "rate of increase from" and inserting "payments under the State system as compared to aggregate payments which would have been made under the national system since".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989. 42 USC 1395ww note.

(g) ENROLLMENT IN PART A FOR HMO MEMBERS.—

(1) IN GENERAL.—Section 1818(c) (42 U.S.C. 1395i-2(c)) is amended—

(A) by striking "and" at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting a semicolon, and

(C) by adding at the end the following new paragraphs:

"(7) an individual who meets the conditions of subsection (a) may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1876 with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

"(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

"(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1876 with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

"(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

"(9) in applying the provisions of section 1839(b), there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1876 with an eligible organization.".

42 USC 1395i-2 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on February 1, 1991.

(h) NURSING HOME REFORM.—

(1) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

42 USC 1395aa note.

(A) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

42 USC 1395i-3.

(B) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1819(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A skilled nursing facility" and inserting "(i) Except as provided in clause (ii), a skilled nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(C) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1819(b)(5)(C) (42 U.S.C. 1395i-

3(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(D) RETRAINING OF NURSE AIDES.—Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(E) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1819(f)(2)(A)(iv) (42 U.S.C. 1395i-3(f)(2)(A)(iv)) is amended—

(i) in subclause (I), by striking "and" at the end;

(ii) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(iii) in subclause (II), by striking the period at the end and inserting ", and"; and

(iv) by adding at the end the following new subclause:

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.".

(F) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(i) IN GENERAL.—Section 1819(f)(2)(B)(iii)(I) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a skilled nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II);

"(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) or section 1919(g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) or section 1919(h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in clauses (i) or (iii) of subsection (h)(2)(B), subsection (h)(4), section 1919(h)(1)(B)(i), or in clauses (i), (iii), or (iv) of section 1919(h)(2)(A), or".

(ii) EFFECTIVE DATE.—The amendments made by clause (i) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988— 42 USC 1395i-3 note.

(I) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(II) was subject to a denial of payment under either such title;

(III) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(IV) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(V) pursuant to State action, was closed or had its residents transferred.

(G) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1819(f)(2)(B) (42 U.S.C. 1395i-3(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

42 USC 1395i-3 note.

(H) EFFECTIVE DATE.—Except as provided in subparagraph (F), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(2) OTHER AMENDMENTS.—

(A) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—(i) Section 1861(v)(1)(E) (42 U.S.C. 1395x(v)(1)(E)) is amended in the second sentence by striking "the costs of such facilities" and inserting "the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) of such facilities".

42 USC 1395yy.

(ii) Section 1888(d)(1) (42 U.S.C. 1395xx(d)(1)) is amended in the first sentence by striking "(and capital-related costs)" and inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) and capital-related costs".

(B) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1819(b)(1)(B) (42 U.S.C. 1395i-3(b)(1)(B)) is amended by adding at the end the following new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(C) PERIOD FOR RESIDENT ASSESSMENT.—Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not later than 14 days".

(D) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1819(b)(4)(A) (42 U.S.C. 1395i-3(b)(4)(A)) is amended—

(i) by striking "and" at the end of clause (v),

(ii) by striking the period at the end of clause (vi) and inserting "; and", and

(iii) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(E) NOTIFICATION OF SECRETARIAL WAIVER.—Section 1819(b)(4)(C)(ii) (42 U.S.C. 1395i-3(b)(4)(C)(ii)) is amended—

(i) by striking "and" at the end of subclause (II);

(ii) by striking the period at the end of subclause (III) and inserting a comma; and

(iii) by adding at the end the following new subclauses:

"(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(F) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1819(b)(5)(F)(i) (42 U.S.C. 1395i-3(b)(5)(F)(i)) is amended by striking "(G)," and inserting "(G)) or a registered dietician,".

(G) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS FOR NON-MEDICAL REASONS.—Section 1819(c)(1)(A) (42 U.S.C. 1395i-3(c)(1)(A)) is amended—

(i) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this title) to a portion of the facility that is not such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this title or to medical assistance under title XIX of this Act.".

(H) RESIDENT ACCESS TO CLINICAL RECORDS.—Section 1819(c)(1)(A)(iv) (42 U.S.C. 1395i-3(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(I) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1819(c)(1)(B)(ii) (42 U.S.C. 1395i-3(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under section 1919(e)(6)" after "in such rights)".

(J) SPECIFICATION OF REQUIRED PROGRAMS.—Section 1819(e)(1)(A) (42 U.S.C. 1395i-3(e)(1)(A)) is amended by striking "clause (i) or (ii) of subsection (f)(2)(A)" and inserting "subsection (f)(2)".

(K) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1819(e)(2) (42 U.S.C. 1395i-3(e)(2)) is amended—

(i) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

(ii) by adding at the end the following new subparagraph:

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(L) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1819(g)(1)(C) (42 U.S.C. 1395i-3(g)(1)(C)) is amended by adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(M) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1819(g)(5)(A)(i) (42 U.S.C. 1395i-3(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(N) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1819(g)(5)(B) (42 U.S.C. 1395i-3(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h), with respect".

42 USC 1395i-3 note.

(O) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

42 USC 1395i-3 note.

(P) EFFECTIVE DATES.—The amendments made by this paragraph shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(i) CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY.—

42 USC 1395b-1 note.

(1) RURAL HOSPITAL DEMONSTRATION.—The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) NURSING HOME DEMONSTRATIONS.—Section 6901(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by striking "Wisconsin" and inserting "Wisconsin and nursing home case-mix demonstration projects in other States"; and

(B) by striking the second sentence.

(3) STATE WAIVER AUTHORITY.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3)(B), by striking "October 1, 1983" and inserting "January 1, 1981";

(B) in the second sentence, by striking "seventh month" and inserting "37th month"; and

(C) by adding at the end the following: "If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.".

(4) EFFECTIVE DATE.—The amendment made by paragraphs (1) and (2) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(j) DETERMINATION OF REASONABLE COSTS RELATING TO SWING BEDS.—

(1) IN GENERAL.—Section 1883(a)(2)(B)(ii)(II) (42 U.S.C. 1395tt(a)(2)(B)(ii)(II)) is amended by striking "the previous calendar year" and all that follows through the period and inserting "the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1888 for subsequent cost reporting periods and up to and including such calendar year) under this title to freestanding skilled nursing facilities in the region (as defined in section 1886(d)(2)(D)) in which the facility is located.".

(2) HOLD HARMLESS.—If, as a result of the amendment made by paragraph (1), the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year. 42 USC 1395tt note.

42 USC 1395tt note.

(3) SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987.—Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.

42 USC 1395tt note.

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1990.

42 USC 1395yy note.

(k) PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the

Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(l) REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS.— 42 USC 1395ww note.

(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

(m) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) APPLICATION OF PREENTITLEMENT PSYCHIATRIC HOSPITAL SERVICES TO LIMIT ON INPATIENT HOSPITAL SERVICES.—Effective as if included in the enactment of the Medicare Catastrophic Coverage Repeal Act of 1989, section 101(b)(1)(B) is amended by inserting "(other than the limitation under section 1812(c) of such Act)" after "limitation". 42 USC 1395e note.

(2) PROVISIONS RELATING TO HOSPITALS.—

(A) Section 1886(d)(5)(D)(iii) (42 U.S.C. 1395ww(d)(5)(D)(iii)), as amended by section 6003(e)(1)(A)(iv) of Omnibus Budget Reconciliation Act of 1989 (in this subsection referred to as "OBRA-1989"), is amended by striking "The term" and inserting "For purposes of this title, the term".

(B) Section 1820 of such Act (42 U.S.C. 1395i-4), as added by section 6003(g)(1)(A) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subsection (d)(1), by striking "demonstration";

(ii) in subsection (g)(1)(A)(ii), by striking "rural referral center" and inserting "regional referral center"; and

(iii) in subsection (j), by inserting "and part C" after "this part".

(C) Section 6003(g)(3)(C)(vii)(I) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "each place it appears". 42 USC 1395*l*.

(D) Section 1835(c) of the Social Security Act (42 U.S.C. 1395n(c)) is amended—

(i) in the first sentence, by striking "a hospital" and inserting "a hospital or a rural primary care hospital";

(ii) in the second sentence, by striking "1833(a)(2)" and inserting "1833(a)(2) (or, in the case of a rural primary care hospital, in accordance with section 1833(a)(6))"; and

(iii) by striking the third sentence.

(3) TECHNICAL CORRECTIONS RELATING TO OTHER PROVIDERS OF SERVICES.—

(A) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)), as amended by section 6005(a)(2) of the Omnibus Budget Rec-

onciliation Act of 1989, is amended by striking "during fiscal year 1990" and inserting "on or after January 1, 1990, and on or before September 30, 1990,".

42 USC 1395f note.

(B) Section 6005(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "subsection (a)" and inserting "subsections (a) and (b)".

(C) Section 1818A(d)(1) (42 U.S.C. 1395i-2a(d)(1)), as inserted by section 6012(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subparagraph (A), by inserting "for enrollment under this section" after "Premiums", and

(ii) by striking subparagraph (C).

(D) Section 1818(g)(2)(B) (42 U.S.C. 1395i-2(g)(2)(B)), as added by section 6013(a) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (c)" and inserting "subsection (c)(6)".

(F) Section 1819(f)(2)(A)(ii) (42 U.S.C. 1395i-3(f)(2)(A)(ii)) is amended by striking "and" at the end.

(G) Section 1866(a)(1)(F) (42 U.S.C. 1395cc(a)(1)(F) is amended—

(i) in clause (i), by striking the comma at the end and inserting "),", and

(ii) in clause (ii), by striking "(4)(A)" and inserting "(3)(A)" and by striking the semicolon at the end and inserting a comma.

PART 2—PROVISIONS RELATING TO PART B

Subpart A—Payment for Physicians' Services

SEC. 4101. CERTAIN OVERVALUED PROCEDURES.

(a) PREVIOUSLY IDENTIFIED PROCEDURES.—Section 1842(b)(14) (42 U.S.C. 1395u(b)(14)) is amended—

(1) by inserting "(i)" after "(14)(A)"; and

(2) by adding at the end of subparagraph (A) the following new clause:

"(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.".

(b) UNSURVEYED SURGICAL AND TECHNICAL PROCEDURES.—(1) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

"(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in para-

graph (17) and physicians' services specified in paragraph (14)(C)(i).

"(ii) Primary care services specified in subsection (i)(4), hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

"(iii) Partial, simple and subcutaneous mastectomy; tendon sheath injections; small joint arthrocentesis; femoral fracture treatments; trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; lobectomy; aneurysm repair; enterectomy; colectomy; cholecystectomy; cystourethroscopy; transurethral fulguration; transurerethral resection; sacral laminectomy; tympanoplasty with mastoidectomy; and ophthalmoscopy.".

(2) In applying section 1842(b)(16) of the Social Security Act: 42 USC 1395u note.

(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

(B) The codes for the procedures specified in clause (iii) are as follows: Partial, simple and subcutaneous mastectomy (HCPCS codes 19160 and 19162); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250, and 92260).".[5]

SEC. 4102. RADIOLOGY SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended—

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) 1991 FEE SCHEDULES.—For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall be determined as follows:

"(i) NATIONAL WEIGHTED AVERAGE CONVERSION FACTOR.—The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

"(ii) REDUCED NATIONAL WEIGHTED AVERAGE.—The national weighted average estimated under clause (i) shall be reduced by 13 percent.

[5] So in original. The "." should probably be deleted.

"(iii) COMPUTATION OF 1990 LOCALITY INDEX RELATIVE TO NATIONAL AVERAGE.—The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

"(iv) LOCAL ADJUSTMENT.—Subject to clause (vii), the conversion factor to be applied to the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clauses (vi).

"(v) LOCALLY-ADJUSTED AMOUNT.—For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

"(vi) GPCI-ADJUSTED AMOUNT.—For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

"(vii) LIMITS ON CONVERSION FACTOR.—The conversion factor to be applied to a locality under this subparagraph to the professional or technical component of a service shall not be more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).".

(b) SPECIAL RULE FOR TRANSITION FOR RADIOLOGY SERVICES.—Section 1848(a)(2)(C) (42 U.S.C. 1395w-4(a)(2)(C)) is amended—

(1) by inserting "AND RADIOLOGY" after "SPECIAL RULE FOR ANESTHESIA", and

(2) by adding at the end the following: "With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).

(c) REDUCTION IN PREVAILING CHARGE LEVEL FOR OTHER RADIOLOGY SERVICES.— 42 USC 1395m note.

(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act, the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act with respect to such services.

(2) EXCEPTION.—Paragraph (1) shall not apply to radiology services which are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(d) REDUCTION IN PAYMENTS FOR TECHNICAL COMPONENTS OF CERTAIN SCANNING SERVICES.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by inserting after subparagraph (D) the following new paragraph:

"(E) In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.".

(e) LIMITATION ON ADJUSTMENTS.—For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act— 42 USC 1395m note.

(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act, in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

(3) section 1842(b)(9) of such Act shall not apply.

(f) USE OF LOCALITIES.—Section 1834(b)(1)(B) (42 U.S.C. 1395m(b)(1)(B)) is amended by inserting "locality," after "statewide,".

(g) TREATMENT OF NUCLEAR MEDICINE PHYSICIANS.—

(1) CONTINUATION OF SPECIAL RULE.—Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking all that follows "Social Security Act" the second place it appears and inserting the following: "beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.". 42 USC 1395m note.

(2) ADJUSTED HISTORICAL PAYMENT BASIS.—Section 1848(a)(2)(D) (42 U.S.C. 1395w-4(a)(2)(D)) is amended—

(A) in clause (ii) by inserting ", but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" after "section 1834(b)(6))", and

(B) by adding at the end the following:

"(iii) NUCLEAR MEDICINE SERVICES.—In applying clause (i) in the case of physicians' services which are nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted aver-

age prevailing charge the amount provided under such section.".

(h) EXTENSION OF SPLIT BILLING RULE FOR INTERVENTIONAL RADIOLOGISTS.—Section 6105(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "or 1991" after "1990" each place it appears.

42 USC 1395m note.

(i) EFFECTIVE DATES.—

42 USC 1395m note.

(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (f) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4103. ANESTHESIA SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1842(q)(1) (42 U.S.C. 1395u(q)(1)) is amended—

(1) by inserting "(A)" after "(q)(1)", and

(2) by adding at the end the following new subparagraph:

"(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall be determined as follows:

"(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

"(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

"(iii) Subject to clause (iv), the prevailing charge conversion factor to be applied in a locality is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

"(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).".

(b) EXTENSION OF REDUCTION FOR SUPERVISION OF CONCURRENT SERVICES.—Section 1842(b)(13) (42 U.S.C. 1395u(b)(13)) is amended by striking "1991" each place it appears and inserting "1996".

SEC. 4104. PHYSICIAN PATHOLOGY SERVICES.

(a) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES.—Subsection (f) of section 1834 (42 U.S.C. 1395m) is amended to read as follows:

"(f) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES DURING FISCAL YEAR 1991.—

"(1) IN GENERAL.—For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(2) LIMITATION.—The prevailing charge for the technical and professional components of an physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "or physician pathology services" and by striking "or section 1834(f), respectively".

(2) Section 1848(a)(1) of such Act (42 U.S.C. 1395w-4(a)(1)) is amended by striking "or 1834(f)".

(3) Section 4050 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

42 USC 1395*l* note.

(c) ANCILLARY POLICY.—The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act, shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.

42 USC 1395w-4 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

42 USC 1395*l* note.

SEC. 4105. UPDATE FOR PHYSICIANS' SERVICES.

(a) PERCENTAGE INCREASE IN MEI FOR 1991.—

(1) IN GENERAL.—Section 1842(b)(4)(E) (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

"(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

"(I) 0 percent for services (other than primary care services), and

"(II) 2 percent for primary care services (as defined in subsection (i)(4)).".

(2) CUSTOMARY CHARGES FOR 1991.—Section 1842(b)(4)(B) (42 U.S.C. 1395u(b)(4)(B)) is amended by adding at the end the following new clause:

"(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4)) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this

section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.".

(3) CHANGE IN PAYMENT FOR YEARS AFTER 1991.—Section 1848 of such Act (42 U.S.C. 1395w-4) is amended in subsection (d)(3)(A)—

(A) in clause (i), by inserting "except as provided in clause (iii)," after "subparagraph (B),", and

(B) by adding at the end the following new clause:

"(iii) ADJUSTMENT IN PERCENTAGE INCREASE.—In applying clause (i) for services furnished in 1992 for which the appropriate update index is the index described in clause (ii)(I), the percentage increase in the appropriate update index shall be reduced by 0.4 percentage points.".

(b) INCREASE IN PREVAILING CHARGE FLOOR FOR PRIMARY CARE SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A)(vi) of such Act (42 U.S.C. 1395u(b)(4)(A)(vi)) is amended by striking "50 percent" and inserting "60 percent".

42 USC 1395w-4 note.

(2) BUDGET NEUTRAL IMPLEMENTATION.—In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act for physicians' services in 1991 assuming that the amendments made by this subsection did not apply.

42 USC 1395u note.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to services furnished on or after January 1, 1991.

(c) VOLUME PERFORMANCE STANDARD FOR FISCAL YEAR 1991.—Section 1848(f) (42 U.S.C. 1395w-4(f)) is amended—

(1) in paragraph (1)(C), by striking "1990" the first place it appears and inserting "1991", and

(2) by adding at the end of paragraph (2) the following:

"(C) Notwithstanding subparagraph (A), the performance standard rate of increase for a category of physicians' services for fiscal year 1991 shall be the sum of—

"(i) the Secretary's estimate of the percentage by which actual expenditures for the category of physicians' services under this part for fiscal year 1991 exceed actual expenditures for such category of services in fiscal year 1990 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990), and

"(ii) the Secretary's estimate of the percentage increase or decrease in expenditures for the category of services in fiscal year 1991 (compared with fiscal year 1990) that will result from changes in law and regulations (including the Omnibus Budget Reconciliation Act of 1990), reduced by 2 percentage points.".

42 USC 1395w-4 note.

(d) Not later than 45 days after the date of the enactment of this Act, the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal

Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act for fiscal year 1991.

SEC. 4106. NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

(a) EXTENSION OF CUSTOMARY CHARGE LIMIT AND INCLUSION OF HEALTH CARE PRACTITIONERS.—

(1) IN GENERAL.—Subparagraph (F) of section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

"(F)(i) In the case of physicians' services and professional services of a health care practitioner (other than primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) furnished during the physician's or practitioner's first through fourth years of practice (if payment for those services is made separately under this part and on other than a cost-related basis), the prevailing charge or fee schedule amount to be applied under this part shall be 80 percent for the first year of practice, 85 percent for the second year of practice, 90 percent for the third year of practice, and 95 percent for the fourth year of practice, of the prevailing charge or fee schedule amount for that service under the other provisions of this part.

"(ii) For purposes of clause (i):

"(I) The term 'health care practitioner' means a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner as may be specified by the Secretary.

"(II) The term 'first year of practice' means, with respect to a physician or practitioner, the first calendar year during the first 6 months of which the physician or practitioner furnishes professional services for which payment is made under this part, and includes any period before such year.

"(III) The terms 'second year of practice', 'third year of practice', and 'fourth year of practice' mean the second, third, and fourth calendar years, respectively, following the first year of practice.".

(2) CONFORMING AMENDMENTS.—Section 6108(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1989 is amended— 42 USC 1395u note.

(A) by inserting "or 1991" after "1990", and

(B) by inserting "or 1990" after "1989".

(b) APPLICATION UNDER FEE SCHEDULE.—

(1) IN GENERAL.—Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF NEW PHYSICIANS.—In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1886(d)(2)) that is

designated under section 322(a)(1)(A) of the Public Health Service Act as a health manpower shortage area.".

42 USC 1395u.

(2) CONFORMING AMENDMENTS.—Section 1842(b)(4)(F), as amended by subsection (a), is amended—

(A) in clause (i), by striking "physicians' services and",

(B) in clause (i), by striking "physician's or", and

(C) in clause (ii)(II), by striking "physician or" each place it appears.

42 USC 1395w-4 note.

(c) CONFORMING ADJUSTMENT IN CONVERSION FACTOR COMPUTATION.—In computing the conversion factor under section 1848(d)(1)(B) for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

42 USC 1395u note.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) apply to services furnished after 1990, except that—

(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

(2) The amendments made by subsection (b) shall apply to services furnished after 1991.

SEC. 4107. ASSISTANTS AT SURGERY.

(a) PHYSICIANS AS ASSISTANTS-AT-SURGERY.—

(1) IN GENERAL.—Section 1848(i) (42 U.S.C. 1395w-4(i)) is amended by adding at the end the following:

"(2) ASSISTANTS-AT-SURGERY.—

"(A) IN GENERAL.—Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

"(B) DENIAL OF PAYMENT IN CERTAIN CASES.—If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.".

42 USC 1395w-4 note.

(2) APPLICATION IN 1991.—Section 1848(i)(2) of the Social Security Act, as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount.

(b) CONFORMING AMENDMENT.—Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended—

(1) by inserting "(A)" after "(15)",

(2) by striking "; or" at the end and inserting ", or", and
(3) by adding at the end the following new subparagraph:
"(B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies; or".

(c) EFFECTIVE DATE.—The amendment made by subsection shall apply with respect to services furnished on or after January 1, 1992. 42 USC 1395y note.

SEC. 4108. TECHNICAL COMPONENTS OF CERTAIN DIAGNOSTIC TESTS.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)), as amended by section 4101, is further amended by adding at the end the following new paragraph:

"(18) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to tests and services furnished on or after January 1, 1991. 42 USC 1395u note.

SEC. 4109. INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

"(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS.—If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1842(j)(2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991. 42 USC 1395w-4 note.

SEC. 4110. RECIPROCAL BILLING ARRANGEMENTS.

(a) IN GENERAL.—The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended—
(1) by striking "and" before "(C)", and
(2) by inserting before the period at the end the following: ", and (D) payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavail-

able to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days".

42 USC 1395u note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

42 USC 1395u note.

SEC. 4111. STUDY OF PREPAYMENT MEDICAL REVIEW SCREENS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

(b) LIMITATIONS.—The study shall be based upon the release of the screen parameters at a minimum of six carriers.

(c) REPORT.—The Secretary shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.

SEC. 4112. PRACTICING PHYSICIANS ADVISORY COUNCIL.

Title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

"PRACTICING PHYSICIANS ADVISORY COUNCIL

42 USC 1395ee.

"SEC. 1868. (a) The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the 'Council') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this title in the previous year. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

"(b) The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

"(c) Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.".

42 USC 1395ff note.

SEC. 4113. STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier

area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

SEC. 4114. UTILIZATION SCREENS FOR PHYSICIAN VISITS IN REHABILITATION HOSPITALS.

42 USC 1395u note.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit patients after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 has been exceeded.

SEC. 4115. STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM.

42 USC 1395w-4 note.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

SEC. 4116. LIMITATION ON BENEFICIARY LIABILITY.

Section 1848(g)(2)(A) (42 U.S.C. 1395w-4(g)(2)(A)) is amended by adding at the end thereof the following:

"In the case of evaluation and management services (as specified in section 1842(b)(16)(B)(ii)), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.".

SEC. 4117. STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES.

42 USC 1395w-4 note.

(a) IN GENERAL.—Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w-4(j)(2)), in the case of the States of Nebraska and Oklahoma, if the respective State meets the require-

ments specified in subsection (b) on or before April 1, 1991, the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D))), and

(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w-4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3))) furnished on or after January 1, 1992.

(b) REQUIREMENTS.—The requirements specified in this subsection are that (on or before April 1, 1991) there are written expressions of support for treatment of the State as a single fee schedule area (on a budget-neutral basis) from—

(1) each member of the congressional delegation from the State, and

(2) organizations representing urban and rural physicians in the State.

(c) BUDGET NEUTRALITY.—Notwithstanding section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)), the Secretary shall provide for treatment of a State as a single fee schedule area (as described in subsection (a)) in a manner that ensures that total payments for physicians' services (as so defined) furnished by physicians in the State during 1992 are not greater or less than total payments for such services would have been but for such treatment.

(d) CONSTRUCTION.—Nothing in this section shall be construed as limiting the availability (to the Secretary, the appropriate agency or organization with a contract under section 1842, or physicians in a State) of otherwise applicable administrative procedures for modifying the fee schedule area or areas in the State after implementation of subsection (a) with respect to the State.

SEC. 4118. TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES.—

(1) Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended—

(A) in subparagraph (B)(iii)(I), by striking "practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))" and inserting "practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service";

(B) in subparagraph (B)(iii)(II), by striking "practice expense ratio" and inserting "practice expense component (percent), divided by 100";

(C) in subparagraph (C)(i), by striking "physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress," and inserting "procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee,

Revised September 20, 1989, prepared by the Physician Payment Review Commission";

(D) in subparagraph (C)(iii), by striking "The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement" and inserting "The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list"; and

(E) in subparagraph (C)(iv), by striking "such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)" and inserting "the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)".

(2) Section 1842(b)(4)(E)(iv)(I) of such Act (42 U.S.C. 1395u(b)(4)(E)(iv)(I)) is amended by striking "Table #2" and all that follows through "101st Congress" and inserting "the list referred to in paragraph (14)(C)(i)".

(3) The amendments made by paragraphs (1) and (2) apply to services furnished after March 1990. 42 USC 1395u note.

(b) MVPS AS MULTIPLICATIVE, NOT ADDITIVE.—Section 1848(f)(2)(A) (42 U.S.C. 1395w-4(f)(2)(A)) is amended—

(1) in the matter preceding clause (i) by striking "sum" and inserting "product";

(2) in clauses (i) through (iv), by inserting "1 plus" before "the Secretary's" each place it appears, [6]

(3) in clause (i), by inserting "(divided by 100)" after "percentage increase", [7]

(4) in clauses (ii) and (iv), by inserting "(divided by 100)" after "decrease", [8]

(5) in clause (iii), by inserting "(divided by 100)" after "percentage growth",[9] and

(6) in the matter following clause (iv), by striking "reduced" and inserting "minus 1, multiplied by 100, and reduced".

(c) PERIODIC REVIEW OF GEOGRAPHIC ADJUSTMENT FACTORS.—Section 1848(e)(1) of such Act is amended—

(1) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)", and

(2) by adding at the end the following new subparagraph:

"(C) PERIODIC REVIEW AND ADJUSTMENTS IN GEOGRAPHIC ADJUSTMENT FACTORS.—The Secretary, not less often than every 3 years, shall review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped since the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be ½ of the adjustment that otherwise would be made.".

(d) ELIMINATION OF RESTRICTION ON INCORPORATION OF TIME IN VISIT CODES.—Section 1848(c)(4) (42 U.S.C. 1395w-4(c)(4)) is amended by striking "only for services furnished on or after January 1, 1993".

[6] So in original. Probably should be ";".
[7] So in original. Probably should be ";".
[8] So in original. Probably should be ";".
[9] So in original. Probably should be ";".

(e) TREATMENT OF PRICE INCREASE IN DETERMINING PERFORMANCE STANDARD RATES OF INCREASE.—Section 1848(f)(2)(A)(iv) (42 U.S.C. 1395w-4(f)(2)(A)(iv)) is amended by inserting "including changes in law and regulations affecting the percentage increase described in clause (i)" after "law or regulations".

(f) MISCELLANEOUS FEE SCHEDULE CORRECTIONS.—

(1) CHANGES IN SECTION 1848.—Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(A) in subsection (c)(1)(B), by striking the last sentence;

(B) in subsections (c)(3)(C)(ii)(II) and (c)(3)(C)(iii)(II), by striking "by" the first place it appears in each respective subsection, [10]

(C) in subsection (c), by redesignating the second paragraph (3), and paragraphs (4) and (5), as paragraphs (4) through (6), respectively;

(D) in subsection (c)(4), as redesignated by subparagraph (C),is amended by striking "subsection" and inserting "section";

(E) in subsection (d)(1)(A), by striking "subparagraph (C)" and inserting "paragraph (3)";

(F) in subsection (d)(1)—

(i) in subparagraph (A)—

(I) by inserting "(or factors)" after "conversion factor" each place it appears,

(II) by inserting "or updates" after "update", and

(III) by striking "subparagraph (C)" and inserting "paragraph (3)"; and

(ii) in subparagraph (C)—

(I) in clause (i), by striking "(or factors)", and

(II) in clause (ii), by inserting "the conversion factor (or factors) which will apply to physicians' services for the following year and" before "the update (or updates)", and by striking "the following" and inserting "such";

(G) in subsection (d)(2)(A), in the matter preceding clause (i), by striking "services" the first place it appears and inserting "services (as defined in subsection (f)(5)(A))";

(H) in subsection (d)(2)(A)(ii)—

(i) by striking "(as defined in subsection (f)(5)(A))" and inserting "and for the services involved", and

(ii) by striking "all such physicians'" and inserting "such"; and

(I) in the last sentence of subsection (d)(2)(A), by striking "proportion of HMO enrollees" and inserting "proportion of individuals who are enrolled under this part who are HMO enrollees";

(J) in subsection (d)(2)(E)(i), by inserting "the" after "as set forth in";

(K) in subsection (d)(2)(E)(ii)(I), by inserting "payments for" after "under this part for";

(L) in subsection (d)(3)(B)—

(i) in clause (i)—

(I) by striking "update for" and inserting "update for a category of physicians' services for"; and

[10] So in original. Probably should be ";".

(II) by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "services in such category";

(ii) in clause (ii)—

(I) by inserting "more than" after "decrease of"; and

(II) in subclause (I), by striking "more than";

(M) in paragraphs (1)(D)(i) and (2)(A)(i) of subsection (f), by striking "calendar years" and inserting "portions of calendar years";

(N) in subsection (f)(2)(A)—

(i) by striking "each performance standard rate of increase" and inserting "the performance standard rate of increase, for all physicians' services and for each category of physicians' services,",

(ii) in clause (i), by striking "physicians' services (as defined in subsection (f)(5)(A) [11]" and inserting "all physicians' services or for the category of physicians' services, respectively,",

(iii) in clause (iii), by striking "physicians' services" and inserting "all physicians' services or of the category of physicians' services, respectively,", and

(iv) in clause (iv), by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "all physicians' services or of the category of physicians' services, respectively,";

(O) in subsection (f)(4)(A), by striking "paragraph (B)" and inserting "subparagraph (B)";

(P) in subsection (f)(4)(B), by striking "Congress specifically approves the plan" and inserting "specifically approved by law";

(Q) in subparagraphs (A) and (B) of subsection (g)(2), by inserting "other than radiologist services subject to section 1834(b)," after "during 1991," and after "during 1992,", respectively;

(R) in subsection (i)(1)(A), by striking "historical payment basis (as defined in subsection (a)(2)(C)(i))" and inserting "adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))"; and

(S) in subsection (j)(1), by striking ", and such other" and all that follows through the period and inserting "(as defined by the Secretary) and all other physicians' services.".

(2) MISCELLANEOUS.—

(A) Effective as if included in the Omnibus Budget Reconciliation Act of 1989, section 6102(e)(4) of such Act is amended by inserting "determined" after "prevailing charge rate". 42 USC 1395u.

(B) Effective January 1, 1991, section 1842(b)(3)(G) of the Social Security Act, as amended by section 6102(e)(2) of Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (j)(1)(C)" and inserting "section 1848(g)(2)". 42 USC 1395u.

(C) Section 1842(b)(12)(A)(ii)(II) of the Social Security Act, as amended by section 6102(e)(4) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

[11] So in original. Probably should be "(A))".

42 USC 1395*l*.

(D) Section 1833(a)(1)(H) of the Social Security Act, as amended by section 6102(e)(5) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

42 USC 1395w-4 note.

(E) Section 6102(e)(11) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "of Health and Human Services" after "Secretary".

(F) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 922(d)(1) of the Public Health Service Act (42 U.S.C. 299c-1(d)(1)) is amended—

(i) by inserting "(other than of dissemination activities)" after "evaluations", and

(ii) by inserting "research, demonstration projects, or evaluations of" after "applications with respect to".

(g) REPEAL OF REPORTS NO LONGER REQUIRED.—

42 USC 1395*l* note.

(1) Subsection (b) of section 4043 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

42 USC 1395u note.

(2) Subsection (c) of section 4048 of such Act is repealed.

42 USC 1395m note.

(3) Section 4049(b)(1) of such Act is amended by striking ", and shall report" and all that follows up to the period at the end.

42 USC 1395u note.

(4) Section 4056(a)(1) of such Act, as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking the last sentence.

42 USC 1395w-1 note.

(5) Section 4056(b)(2) of such Act is amended by striking the second sentence.

(h) ADJUSTMENT OF EFFECTIVE DATES.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987—

42 USC 1395u note.

(1) section 4048(b) of such Act is amended by striking "January 1, 1989" and inserting "March 1, 1989", and

42 USC 1395m note.

(2) section 4049(b)(2) of such Act is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(i) TRANSFER OF PROVISION INTO TITLE XVIII.—

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(r) The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this title.".

42 USC 1395ww note.

(2) Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking subsection (g).

(j) PPRC.—(1) Section 1845 of such Act (42 U.S.C. 1395w-1) is amended—

(A) in subsection (a)(3), by striking "include physicians" and inserting "include (but need not be limited to) physicians";

(B) by striking subsection (b)(3);

(C) in subsection (b)(2)—

(i) by striking "and" at the end of subparagraph (H),

(ii) by striking the period at the end of subparagraph (I) and inserting a semicolon,

(iii) by striking subparagraphs (A), (B), (C), and (F),

(iv) by redesignating subparagraphs (D), (E), (G), (H), and (I) as subparagraphs (A), (B), (C), (D), and (E), and

(v) by adding at the end the following new subparagraphs:

"(F) make recommendations regarding major issues in the implementation of the resource-based relative value scale established under section 1848(c);

"(G) make recommendations regarding further development of the volume performance standards established under section 1848(f), including the development of State-based programs;

"(H) consider policies to provide payment incentives to increase patient access to primary care and other physician services in large urban and rural areas, including policies regarding payments to physicians pursuant to title XIX;

"(I) review and consider the number and practice specialties of physicians in training and payments under this title for graduate medical education costs;

"(J) make recommendations regarding issues relating to utilization review and quality of care, including the effectiveness of peer review procedures and other quality assurance programs applicable to physicians and providers under this title and physician certification and licensing standards and procedures;

"(K) make recommendations regarding options to help constrain the costs of health insurance to employers, including incentives under this title;

"(L) comment on the recommendations affecting physician payment under the medicare program that are included in the budget submitted by the President pursuant to section 1105 of title 31, United States Code; and

"(M) make recommendations regarding medical malpractice liability reform and physician certification and licensing standards and procedures."; and

(D) by striking subsection (e) and redesignating subsection (f) as subsection (e). 42 USC 1395w-1.

(2) In section 1842(b)(2)(A) is amended by striking "section 1845(f)(2)" and inserting "section 1845(e)(2)". 42 USC 1395u.

(k) PROHIBITION OF CERTAIN ADJUSTMENTS.—Section 1848(i) is amended by adding at the end the following new paragraph: 42 USC 1395w-4.

"(3) NO COMPARABILITY ADJUSTMENT.—For physicians' services for which payment under this part is determined under this section—

"(A) a carrier may not make any adjustment in the payment amount under section 1842(b)(3)(B) on the basis that the payment amount is higher than the charge applicable, for a [12] comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

"(B) no payment adjustment may be made under section 1842(b)(8), and

"(C) section 1842(b)(9) shall not apply .".

Subpart B—Provisions Relating to Other Items and Services

SEC. 4151. PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by inserting before the period at the end the following: ", by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995".

[12] So in original. "a" probably should be omitted.

(2) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking "1886(d)(5)(D)(iii))." and inserting "1886(d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

(b) REDUCTION IN REASONABLE COSTS OF HOSPITAL OUTPATIENT SERVICES.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii) (42 U.S.C. 1395x(v)(1)(S)(ii)) is amended—

(A) in subclause (II)—

(i) by striking "Subclause (I)" and inserting "Subclauses (I) and (II)", and

(ii) by striking "capital-related costs of any hospital" and inserting "costs of hospital outpatient services provided by any hospital";

(B) in subclause (III)—

(i) by striking "subclause (I)" and inserting "subclauses (I) and (II)", and

(ii) by striking "capital-related" and inserting "the";

(C) by redesignating subclauses (II) and (III) as subclauses (III) and (IV); and

(D) by inserting after subclause (I) the following new subclause:

"(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1833(a)(2)(B)(i)(I) by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991, 1992, 1993, 1994, or 1995.".

42 USC 1320b-5 note.

(2) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES.—

(A) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider—

(i) the need to provide for appropriate limits on increases in expenditures under the medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a cost-related basis under the medicare program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) REPORTS.—(i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

(c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES AND RADIOLOGY SERVICES.—

(1) MODIFICATION OF COST AND ASC PROPORTIONS OF ASC BLEND AMOUNTS.—

(A) IN GENERAL.—Section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(i) in subclause (I), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991."; and

(ii) in subclause (II), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.".

(B) EXTENSION OF ASC BLEND AMOUNTS FOR EYE AND EYE AND EAR SPECIALTY HOSPITALS.—The last sentence of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended by striking "in fiscal year 1989 or fiscal year 1990" and inserting "on or after October 1, 1988, and before January 1, 1995".

(2) MODIFICATION OF COST AND CHARGE PROPORTIONS FOR RADIOLOGY SERVICES.—Section 1833(n)(1)(B)(ii)(I) (42 U.S.C. 1395l(n)(1)(B)(ii)(I)) is amended by striking the period at the end and inserting ", and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.".

(3) 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES.— Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for the insertion of an intraocular lens during or subsequent to cataract surgery furnished to an individual in an ambulatory

42 USC 1395l note.

surgical center on or after the date of the enactment of this Act and on or before December 31, 1992, shall be equal to $200.

SEC. 4152. DURABLE MEDICAL EQUIPMENT.

(a) PAYMENTS FOR SEAT-LIFT AND TENS.—

(1) 15 PERCENT REDUCTION IN PAYMENTS FOR TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS.—Section 1834(a)(1)(D) of the Social Security Act (42 U.S.C. 1395m(a)(1)(D)) is amended by inserting before the period at the end the following: ", and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent".

(2) SEAT-LIFTS.—Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by adding at the end the following: "With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.".

42 USC 1395m note.

(3) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1991.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL LIMITS ON FEES.—

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Paragraphs (2) and (3) of section 1834(a) of such Act (42 U.S.C. 1395m(a)) are each amended—

(A) in subparagraph (B)(i), by striking "or" at the end;

(B) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

"(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

"(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year."; and

(C) by adding at the end the following new subparagraph:

"(C) COMPUTATION OF LOCAL PAYMENT AMOUNT AND NATIONAL LIMITED PAYMENT AMOUNT.—For purposes of subparagraph (B)—

"(i) the local payment amount for an item or device for a year is equal to—

"(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

"(II) for 1992, the amount determined under this clause for the preceding year increased by the covered item update for 1992; and

"(ii) the national limited payment amount for an item or device for a year is equal to—

"(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item, and

"(II) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.".

(2) MISCELLANEOUS ITEMS AND OTHER COVERED ITEMS.—Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended—

(A) in subparagraph (A)(ii)—

(i) by striking "or" at the end of subclause (I);

(ii) in subclause (II)—

(I) by striking "1991 or", and

(II) by striking "the percentage increase" and all that follows through the period and inserting "the covered item update for the year.";

(iii) by redesignating subclause (II) as subclause (III); and

(iv) by inserting after subclause (I) the following new subclause:

"(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; or";

(B) by amending subparagraph (B) to read as follows:

"(B) COMPUTATION OF NATIONAL LIMITED PURCHASE PRICE.—With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

"(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year; and

"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";

(C) in subparagraph (C)—

(i) by striking "regional purchase price" each place it appears and inserting "national limited purchase price",

(ii) by striking "and subject to subparagraph (D)",

(iii) in clause (ii)—
(I) by striking "75" and inserting "67"; and
(II) by striking "25" and inserting "33", and
(iv) in clause (iii)—
(I) in subclause (I), by striking "50" and inserting "33" and by striking "(A)(ii)(II)" and inserting "(A)(ii)(III)"; and
(II) in subclause (II), by striking "50" and inserting "67"; and
(D) by striking subparagraph (D).

(3) OXYGEN AND OXYGEN EQUIPMENT.—Section 1834(a)(9) of such Act (42 U.S.C. 1395m(a)(9)) is amended—
(A) in subparagraph (A)(ii)(II), by striking "the percentage increase" and all that follows through the period and inserting "the covered item increase for the year.";
(B) by amending subparagraph (B) to read as follows:
"(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE.—With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—
"(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year; and
"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";
(C) in subparagraph (C)—
(i) by striking "regional monthly payment rate" each place it appears and inserting "national limited monthly payment rate",
(ii) in clause (ii)—
(I) by striking "75" and inserting "67"; and
(II) by striking "25" and inserting "33", and
(iii) in clause (iii)—
(I) in subclause (I), by striking "50" and inserting "33"; and
(II) in subclause (II), by striking "50" and inserting "67" and by striking "(B)(i)" and inserting "(B)(ii)"; and
(D) by striking subparagraph (D).

(4) DEFINITION.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:
"(14) COVERED ITEM UPDATE.—In this subsection, the term 'covered item update' means, with respect to a year—
"(A) for 1991 and 1992, [13] reduction of 1 percentage point; and
"(B) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.".

[13] So in original. Probably should be "a reduction".

(5) CONFORMING AMENDMENT.—Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended by striking "defined for purposes of paragraphs (8)(B) and (9)(B)".

(c) TREATMENT OF "RENTAL CAP" ITEMS.—

(1) LIMITATION ON MONTHLY RECOGNIZED RENTAL AMOUNTS FOR MISCELLANEOUS ITEMS.—Section 1834(a)(7)(A)(i) (42 U.S.C. 1395m(a)(7)(A)(i)) is amended—

(A) by striking "for each such month" and inserting "for each of the first 3 months of such period"; and

(B) by striking the semicolon at the end and inserting the following: ", and for each of the remaining months of such period is 7.5 percent of such purchase price;".

(2) OFFER OF OPTION TO PURCHASE FOR MISCELLANEOUS ITEMS; ESTABLISHMENT OF REASONABLE LIFETIME.—Section 1834(a)(7) of such Act (42 U.S.C. 1395m(a)(7)(A)) is amended—

(A) in subparagraph (A)(i), by striking "15 months" and inserting "15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months";

(B) in subparagraph (A)(ii)—

(i) by striking "(ii) during the succeeding 6-month period of medical need," and inserting "(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),", and

(ii) by striking "and" at the end;

(C) in subparagraph (A)(iii)—

(i) by striking "(iii)" and inserting "(v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),", and

(ii) by striking the period at the end and inserting "; and";

(D) by inserting after clause (i) of subparagraph (A) the following new clauses:

"(ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

"(iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option—

"(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

"(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing

payments shall be made in accordance with clause (v);";

(E) by inserting after clause (v) of subparagraph (A) (as amended by subparagraph (C)) the following new clause:

"(vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing."; and

(F) by adding at the end the following new subparagraph:

"(C) REPLACEMENT OF ITEMS.—

"(i) ESTABLISHMENT OF REASONABLE USEFUL LIFETIME.—In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph or paragraph (3).

"(ii) PAYMENT FOR REPLACEMENT ITEMS.—If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

"(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

"(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

"(iii) LENGTH OF REASONABLE USEFUL LIFETIME.—The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, except that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this title, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.".

(3) APPLICATION OF REASONABLE USEFUL LIFETIME FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)), as amended by subsection (b)(1), is further amended by adding at the end the following new subparagraph:

"(D) REPLACEMENT OF ITEMS.—If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the

rental of the replacement item in accordance with subparagraph (A).".

(4) TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(A) IN GENERAL.—Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)(2)(A)) is amended—

(i) in clause (i), by inserting "or" at the end;

(ii) in clause (ii), by striking "or" at the end; and

(iii) by striking clause (iii).

(B) CRITERIA FOR TREATMENT OF WHEELCHAIR AS CUSTOMIZED ITEM.—(i) Section 1834(a)(4) (42 U.S.C. 1395m(a)(4)) is amended by adding at the end the following: "In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.".

(ii) The amendment made by clause (i) shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act (in which case the amendment made by such clause shall not become effective). 42 USC 1395m note.

(d) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991.—In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990. 42 USC 1395u note.

(e) REQUIRING PRIOR APPROVAL FOR POTENTIALLY OVERUSED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(15) CARRIER DETERMINATIONS OF POTENTIALLY OVERUSED ITEMS IN ADVANCE.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

"(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1862(a)(1).".

(f) PROHIBITION AGAINST DISTRIBUTION OF MEDICAL NECESSITY FORMS BY SUPPLIERS.—

(1) IN GENERAL.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsections (b) and (e), is further amended by adding at the end the following new paragraph:

"(16) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF FORMS DOCUMENTING MEDICAL NECESSITY.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

"(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).".

42 USC 1395m note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to forms and documents distributed on or after January 1, 1991.

(g) RECERTIFICATION FOR CERTAIN PATIENTS RECEIVING HOME OXYGEN THERAPY SERVICES.—

(1) IN GENERAL.—Section 1834(a)(5) (42 U.S.C. 1395m(a)(5)) is amended—

(A) in subparagraph (A), by striking "(B) and (C)" and inserting "(B), (C), and (E)"; and

(B) by adding at the end the following new subparagraph:

"(E) RECERTIFICATION FOR PATIENTS RECEIVING HOME OXYGEN THERAPY.—In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.".

42 USC 1395m note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.

(h) TECHNICAL CORRECTIONS.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4062(e) of such Act is amended—

42 USC 1395f note.

(1) by inserting "(other than oxygen and oxygen equipment)" after "covered items", and

(2) by inserting before the period at the end the following: "and to oxygen and oxygen equipment furnished on or after June 1, 1989".

(i) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to items furnished on or after January 1, 1991. 42 USC 1395m note.

SEC. 4153. PROVISIONS RELATING TO ORTHOTICS AND PROSTHETICS.

(a) PAYMENTS FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

(1) MAINTAINING CURRENT PAYMENT METHODOLOGY.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(h) PAYMENT FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—Except as provided in subparagraph (C), the payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item; or

"(ii) the amount recognized under paragraph (2) as the purchase price for the item.

"(C) EXCEPTION FOR CERTAIN PUBLIC HOME HEALTH AGENCIES.—Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(D) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A to a home health agency.

"(2) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) COMPUTATION OF LOCAL PURCHASE PRICE.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city

average) for the 6-month period ending with December 1987, or

"(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

"(B) COMPUTATION OF REGIONAL PURCHASE PRICE.—With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

"(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

"(C) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

"(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

"(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

"(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO DURABLE MEDICAL EQUIPMENT.—Paragraph (12) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'applicable percentage increase' means—

"(i) for 1991, 0 percent, and

"(ii) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

"(B) the term 'prosthetic devices' has the meaning given such term in section 1861(s)(8), except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) the term 'orthotics and prosthetics' has the meaning given such term in section 1861(s)(9), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1861(m)(5).".

(2) CONFORMING AMENDMENTS.—(A) Section 1832(a)(2) (42 U.S.C. 1395k(a)(2)) is amended—

(i) in subparagraphs (A) and (B), by striking "subparagraph (G)" each place it appears and inserting "subparagraph (G) or subparagraph (I)";

(ii) by striking "and" at the end of subparagraph (G);

(iii) by striking the period at the end of subparagraph (H) and inserting "; and"; and

(iv) by adding at the end the following new subparagraph:

"(I) prosthetic devices and orthotics and prosthetics (described in section 1834(h)(4)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

(B) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1) is amended—

(i) by striking ", and (L)" and inserting ", (L)"; and

(ii) by striking "subparagraph and (N)" and inserting the following: "subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1834(h)(4)), the amounts paid shall be the amounts described in section 1834(h)(1), and (N)".

(C) Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (2), in the matter before subparagraph (A), by striking "and (H)" and inserting "(H), and (I)";

(ii) by striking "and" at the end of paragraph (5);

(iii) by striking the period at the end of paragraph (6) and inserting "; and"; and

(iv) by adding at the end the following new paragraph:

"(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1834(h)(4)), the amounts described in section 1834(h).".

(D) Section 1834(a) (42 U.S.C. 1395m(a)), is amended—

(i) in the heading, by striking ", PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS";

(ii) in paragraph (2)(A), by striking "(13)(A)" and inserting "(13)"; and

(iii) in paragraph (13), by striking "means—" and all that follows and inserting the following: "means durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5)).

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items furnished on or after January 1, 1991. 42 USC 1395k note.

(b) PROVISIONS RELATING TO EYEGLASSES.—

42 USC 1395u note.

(1) PROHIBITION ON REGULATIONS.—(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the "Secretary") may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act) following cataract surgery with insertion of an intraocular lens.

(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).

(2) CLARIFYING COVERAGE OF POST-CATARACT EYEGLASSES.—(A) Section 1861(s)(8) (42 U.S.C. 1395x(s)(8)) is amended by inserting after "such devices" the following ", and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens".

(B) Section 1862(a)(7) (42 U.S.C. 1395y(a)(7)) is amended by inserting after "eyeglasses" the first place it appears the following: "(other than eyewear described in section 1861(s)(8))".

42 USC 1395x note.

(C) The amendments made by subparagraphs (A) and (B) shall apply to items furnished on or after January 1, 1991.

42 USC 1395m note.

(c) GAO STUDY OF MEDICARE PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

(1) STUDY.—The Comptroller General shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(a) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the study conducted under subparagraph (A) to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program that the Comptroller General considers appropriate.

(d) CLARIFICATION OF COVERAGE OF OSTOMY SUPPLIES.—

(1) IN GENERAL.—Section 1866(a)(1)(P) (42 U.S.C. 1395cc(a)(1)(P)) is amended by striking "ostomy supplies" and inserting "catheters, catheter supplies, ostomy bags, and supplies related to ostomy care".

42 USC 1395cc note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconiliation[14] Act of 1989.

SEC. 4154. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) LIMIT ON ANNUAL FEE SCHEDULE INCREASES.—Section 1833(h)(2)(A)(ii) (42 U.S.C. 13951(h)(2)(A)(ii)) is amended—

(1) by striking "any other provision of this subsection" and inserting "clause (i)";

(2) by striking "and" at the end of subclause (I);

(3) by striking the period at the end of subclause (II) and inserting ", and"; and

[14] So in original. Probably should be "Reconciliation".

(4) by adding at the end the following new subclause:

"(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent.".

(b) REDUCTION IN NATIONAL CAP ON FEE SCHEDULES.—

(1) IN GENERAL.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii)—

(i) by inserting "and before January 1, 1991," after "1989,", and

(ii) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new clause:

"(iv) after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to tests furnished on or after January 1, 1991. 42 USC 1395*l* note.

(c) CLARIFICATION OF MANDATORY ASSIGNMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS PERFORMED BY PHYSICIANS.—

(1) IN GENERAL.—(A) Section 1833(h)(5)(C) of such Act (42 U.S.C. 1395l(h)(5)(C)) is amended by striking "test performed by a laboratory other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic".

(B) Section 1833(h)(5)(D) of such Act (42 U.S.C. 1395l(i)(5)(D)) is amended by striking "test performed by a laboratory, other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and the amendment made by paragraph (1)(B) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987. 42 USC 1395*l* note.

(d) AGREEMENTS WITH STATES TO DETERMINE COMPLIANCE OF CLINICAL LABORATORIES WITH PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—Section 1864(a) (42 U.S.C. 1395aa(a)) is amended in the first sentence by striking "1861(s)," and inserting "1861(s) or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 353 of the Public Health Service Act,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988. 42 USC 1395aa note.

(e) TECHNICAL CORRECTIONS.—

(1) Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended—

(A) in subclause (II), by striking "a wholly-owned subsidiary of" and inserting "wholly owned by";

(B) in subclause (III), by striking "laboratory" and inserting "laboratory (but not including a laboratory described in subclause (II))"; and

(C) in subclause (III), by striking "submits bills or requests for payment in any year" and inserting "receives

requests for testing during the year in which the test is performed".

42 USC 1395w-2.

(2) The heading of section 1846 of such Act is amended by striking "OF" and inserting "OR SUPPLIERS OF".

42 USC 1395l note.

(3) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9339(b) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking paragraph (3).

42 USC 1395l note.

(4) Section 6111(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "January 1, 1990" and inserting "May 1, 1990".

42 USC 1395l note.

(5) The amendments made by paragraphs (1)(A)[15] (1)(B), (2), and (4) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, and the amendment made by paragraph (1)(C) shall take effect January 1, 1991.

SEC. 4155. COVERAGE OF NURSE PRACTITIONERS IN RURAL AREAS.

(a) IN GENERAL.—Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended—

(1) in clause (ii), by striking "and" at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following new clause:

"(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a rural area (as defined in section 1886(d)(2)(D)) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and".

(b) PAYMENT.—

(1) DIRECT PAYMENT.—Section 1832(a)(2)(B) (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking the semicolon and inserting a comma; and

(C) by adding at the end the following new clause:

"(iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1886(d)(2)(D)); and".

(2) AMOUNT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) as amended by section 4153(a)(2)(B), is amended—

(A) by striking "and" at the end of subparagraph (K); and

(B) by inserting after subparagraph (L) the following new subparagraph: "(M) with respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) if the

[15] So in original. Probably should be "(1)(A),".

services had been performed by a physician (subject to the limitation described in subsection (r)(2))".

(3) CAP ON PREVAILING CHARGE; BILLING ONLY ON ASSIGNMENT-RELATED BASIS.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r)(1) With respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), physician, group practice, ambulatory surgical center, with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, ambulatory surgical center.

"(2)(A) For purposes of subsection (a)(1)(M), the prevailing charge for services described in section 1861(s)(2)(K)(iii) may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) determined for such services performed by physicians who are not specialists.

"(B) In subparagraph (A), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed in a hospital, and

"(ii) 85 percent in the case of other services.

"(3)(A) Payment under this part for services described in section 1861(s)(2)(K)(iii) may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

"(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K)(iii) in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(4) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1861(s)(2)(K)(iii) may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.".

(c) CONFORMING AMENDMENT.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking "section 1861(s)(2)(K)" each place it appears in paragraphs (6) and (12) and inserting "clauses (i), (ii), or (iv) of section 1861(s)(2)(K)".

(d) DEFINITION.—Section 1861(aa)(3) (42 U.S.C. 1395x(aa)(3)) is amended by striking "The term" and all that follows through "who performs" and inserting the following: "The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse

specialist' mean, for purposes of this Act, a physician assistant, nurse practitioner, or clinical nurse specialist who performs".

42 USC 1395k note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4156. COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking "and" at the end of subparagraph (M),

(B) by inserting "and" at the end of subparagraph (N), and

(C) by inserting after subparagraph (N) the following new subparagraph:

"(O) a covered osteoporosis drug and its administration (as defined in subsection (jj)) furnished on or after January 1, 1991, and on or before December 31, 1995; and"; and

(2) by inserting after subsection (ii) the following new subsection:

"Covered Osteoporosis Drug

"(jj) The term 'covered osteoporosis drug' means an injectable drug approved for the treatment of a bone fracture related to post-menopausal osteoporosis provided to an individual if, in accordance with regulations promulgated by the Secretary—

"(1) the individual's attending physician certifies that the patient is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

"(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7)).".

42 USC 1395x note.

(b) STUDY OF EFFECTS OF COVERAGE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on the health of individuals enrolled under such part and the utilization of inpatient hospital and extended care services by such individuals.

(2) REPORT.—By not later than October 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

SEC. 4157. SEPARATE PAYMENT UNDER PART B FOR SERVICES OF CERTAIN HEALTH PRACTITIONERS.

(a) SERVICES OF CERTAIN HEALTH PRACTITIONERS NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b) (42 U.S.C. 1395x(b)) is amended—

(1) in paragraph (3), by striking "(including clinical psychologist (as defined by the Secretary))", and

(2) in paragraph (4), by striking everything after "intern" and inserting ", services described by subsection (s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and".

(b) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended to read as follows:

"(iii) services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;".

(c) CONFORMING AMENDMENTS.—

(1) Section 1862(a)(14) (42 U.S.C. 1395y) is amended—

(A) by striking "or are services of a certified registered nurse anesthetist", and

(B) by inserting after "this paragraph)" a comma and the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,".

(2) The matter in section 1866(a)(1)(H) (42 U.S.C. 1395x(a)(1)(H)) preceding clause (i) is amended by inserting after "and other than" the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and". 42 USC 1395cc.

(d) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to services furnished on or after January 1, 1991. 42 USC 1395k note.

SEC. 4158. REDUCTION IN PAYMENTS UNDER PART B DURING FINAL 2 MONTHS OF 1990. 42 USC 1395l note.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act or under similar contracts under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972.

42 USC 1395ww note.

SEC. 4159. PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the

Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4160. CERTIFIED REGISTERED NURSE ANESTHETISTS.

Section 1833(l) (42 U.S.C. 1395l) is amended—

(1) in paragraph (1)—

(A) by inserting "(A)" after "(1)"; and

(B) by adding at the end the following:

"(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

"(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.";

(2) by striking the second sentence of paragraph (2); and

(3) by striking paragraph (4) and inserting the following:

"(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

"(i) the conversion factor shall be—

"(I) for services furnished in 1991, $15.50,

"(II) for services furnished in 1992, $15.75,

"(III) for services furnished in 1993, $16.00,

"(IV) for services furnished in 1994, $16.25,

"(V) for services furnished in 1995, $16.50,

"(VI) for services furnished in 1996, $16.75, and

"(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year;

"(ii) the payment areas to be used shall be the fee schedule areas used under section 1848 (or, in the case of services fur-

nished during 1991, the localities used under section 1842(b)) for purposes of computing payments for physicians' services that are anesthesia services;

"(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—

"(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1842(q)(1)(B) for physicians' services that are anesthesia services furnished in the area or locality, and

"(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1848,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1848).

"(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

"(ii) The conversion factor used under clause (i) shall be—

"(I) for services furnished in 1991, $10.50,

"(II) for services furnished in 1992, $10.75,

"(III) for services furnished in 1993, $11.00,

"(IV) for services furnished in 1994, $11.25,

"(V) for services furnished in 1995, $11.50,

"(VI) for services furnished in 1996, $11.70, and

"(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year.

"(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

"(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

"(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

"(I) the 1990 conversion factor, or

"(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

"(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs (A)(iii), exceed the

conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.".

SEC. 4161. COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) COMMUNITY HEALTH CENTERS.—

(1) COVERAGE.—Section 1861(s)(2)(E) of the Social Security Act (42 U.S.C. 1395x(s)(2)(E)) is amended by inserting "and Federally qualified health center services" after "rural health clinic services".

(2) SERVICES DEFINED.—Section 1861(aa) of such Act is amended—

(A) in the heading, by adding at the end the following: "and Federally Qualified Health Center Services",

(B) in paragraph (3), by striking "paragraphs (1) and (2)" and inserting "the previous provisions of this subsection" and by redesignating such paragraph and paragraph (4) as paragraph (5) and (6), respectively, and

(C) by inserting after paragraph (2) the following new paragraphs:

"(3) The term 'Federally qualified health center services' means—

"(A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and

"(B) preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service Act,

when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

"(4) The term 'Federally qualified health center' means an entity which—

"(A)(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;

"(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or

"(C) was treated by the Secretary, for purposes of part B, as a comprehensive Federally funded health center as of January 1, 1990.".

(3) PAYMENTS.—

(A) IN GENERAL.—Section 1832(a)(2)(D) of such Act (42 U.S.C. 1395k(a)(2)(D)) is amended by inserting "(i)" after "(D)" and by inserting "and (ii) Federally qualified health center services" after "rural health clinic services".

(B) DEDUCTIBLE DOES NOT APPLY.—The first sentence of section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended—

(i) by striking "and" before "(4)",

(ii) by inserting before the period at the end the following: ", and (5) such deductible shall not apply to Federally qualified health center services".

(C) EXCLUSION FROM PAYMENT REMOVED.—Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(i) in paragraph (2), by inserting ", except in the case of Federally qualified health center services" before the semicolon at the end, and

(ii) in paragraph (3), by inserting ", in the case of Federally qualified health center services, as defined in section 1861(aa)(3)," after "1861(aa)(1),", and

(iii) by adding at the end the following new sentence: "Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B).".

(4) WAIVER OF ANTI-KICKBACK REQUIREMENT.—Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by redesignating subparagraph (D) as subparagraph (E), and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) a waiver of any coinsurance under part B of title XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act; and".

(5) CONFORMING AMENDMENTS.—Section 1861 of such Act (42 U.S.C. 1395x) is further amended—

(A) in subsections (s)(2)(H)(i) and (s)(2)(K), by striking "subsection (aa)(3)" and "subsection (aa)(4)" each place either appears inserting "subsection (aa)(5)" and "subsection (aa)(6)", respectively, and

(B) in subsection (aa)(1)(B), by striking "paragraph (3)" and inserting "paragraph (5)".

(6) PRRB REVIEW OF COST REPORTS FOR FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1878 of the Social Security Act (42 U.S.C. 1395oo) is amended by adding at the end the following new subsection:

"(j) In this section, the term 'provider of services' includes a Federally qualified health center.".

42 USC 254b note.

(7) GAO STUDY OF HOSPITAL STAFF PRIVILEGES FOR PHYSICIANS PRACTICING IN COMMUNITY HEALTH CENTERS.—

(A) STUDY.—The Comptroller General shall conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study shall review—

(i) how many physicians practicing in such centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital, and

(i)(I) the criteria hospitals use in deciding whether to grant admitting privileges and (II) whether such criteria act as significant barriers to health center physicians obtaining hospital privileges.

(B) REPORT.—By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and shall include in such report such recommendations as the Comptroller General deems appropriate.

(8) EFFECTIVE DATE.—(A) Subject to subparagraphs (B) and (C), the amendments made by this section shall apply to services furnished on or after October 1, 1991. 42 USC 1395k note.

(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act, to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

(C) The amendment made by paragraph (6) shall apply to cost reports for periods beginning on or after October 1, 1991.

(b) RURAL HEALTH CLINIC SERVICES.—

(1) EXPEDITED CERTIFICATION.—Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended by adding at the end the following: "If a State agency has determined under section 1864(a) that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).".

(2) TEMPORARY WAIVER OF STAFFING REQUIREMENTS.—Section 1861(aa) of such Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

"(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility.

"(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.".

(3) PRODUCTIVITY SCREENS.—In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner). 42 USC 1395x note.

(4) PRRB REVIEW OF COST REPORTS FOR RURAL HEALTH CENTERS.—Section 1878(j) of the Social Security Act (42 U.S.C. 1395oo(j)), as added by subsection (a)(6), is amended by inserting "a rural health clinic and" after "includes".

(5) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1991, except that the amendment made by paragraph (4) shall apply to cost reports for periods beginning on or after October 1, 1991. 42 USC 1395x note.

SEC. 4162. PARTIAL HOSPITALIZATION IN COMMUNITY MENTAL HEALTH CENTERS.

(a) IN GENERAL.—Section 1861(ff)(3) of the Social Security Act (42 U.S.C. 1395x(ff)(3)) is amended—

(1) by striking "(3)" and inserting "(3)(A)";

(2) by striking "outpatients" and inserting "outpatients or by a community mental health center (as defined in subparagraph (B)),"; and

(3) by adding at the end the following new subparagraph:

"(B) For purposes of subparagraph (A), the term 'community mental health center' means an entity—

"(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

"(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.".

(b) CONFORMING AMENDMENTS.—(1) Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) as amended by section 4153(a)(2)(A), is amended—

(A) by striking "and" at the end of subparagraph (H);

(B) by striking the period at the end of subparagraph (I) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(J) partial hospitalization services provided by a community mental health center (as described in section 1861(ff)(2)(B)).".

(2) Section 1866(e) of such Act (42 U.S.C. 1395cc(e))[16] is amended by striking "include a clinic" and all that follows through the period and inserting the following: "include—

"(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A) (or meets the requirements of such section through the operation of section 1861(g)), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B) (or meets the requirements of such section through the operation of section 1861(g)), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services; and

"(2) a community mental health center (as defined in section 1861(ff)(3)(B)), but only with respect to the furnishing of partial hospitalization services (as described in section 1861(ff)(1)).".

42 USC 1395k note.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to partial hospitalization services provided on or after October 1, 1991.

SEC. 4163. COVERAGE OF SCREENING MAMMOGRAPHY.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)—

(A) in paragraph (11), by striking all that follows "(bb))" and inserting a semicolon,

(B) in paragraph (12)(C), by striking all that follows "area)" and inserting "; and", and

(C) by inserting after paragraph (12) the following new paragraph:

[16] So in original. Probably should be "(e))".

"(13) screening mammography (as defined in subsection (jj));"; and

(2) by inserting after subsection (ii) the following new subsection:

"Screening Mammography

"(jj) The term 'screening mammography' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.".

(b) PAYMENT AND COVERAGE.—Section 1834 of such Act (42 U.S.C. 1395m) is amended—

(1) in subsection (b)(1)(B), by inserting "and subject to subsection (c)(1)(A)" after "conversion factors", and

(2) by inserting after subsection (b) the following new subsection:

"(c) PAYMENTS AND STANDARDS FOR SCREENING MAMMOGRAPHY.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part, with respect to expenses incurred for screening mammography (as defined in section 1861(jj))—

"(A) payment may be made only for screening mammography conducted consistent with the frequency permitted under paragraph (2);

"(B) payment may be made only if the screening mammography meets the quality standards established under paragraph (3); and

"(C) the amount of the payment under this part shall, subject to the deductible established under section 1833(b), be equal to 80 percent of the least of—

"(i) the actual charge for the screening,

"(ii) the fee schedule established under subsection (b) or the fee schedule established under section 1848, whichever is applicable, with respect to both the professional and technical components of the screening mammography, or

"(iii) the limit established under paragraph (4) for the screening mammography.

"(2) FREQUENCY COVERED.—

"(A) IN GENERAL.—Subject to revision by the Secretary under subparagraph (B)—

"(i) No payment may be made under this part for screening mammography performed on a woman under 35 years of age.

"(ii) Payment may be made under this part for only 1 screening mammography performed on a woman over 34 years of age, but under 40 years of age.

"(iii) In the case of a woman over 39 years of age, but under 50 years of age, who—

"(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

"(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.

"(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

"(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.

"(B) REVISION OF FREQUENCY.—

"(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

"(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection, but no such revision shall apply to screening mammography performed before January 1, 1992.

"(3) QUALITY STANDARDS.—The Secretary shall establish standards to assure the safety and accuracy of screening mammography performed under this part. Such standards shall include the requirements that—

"(A) the equipment used to perform the mammography must be specifically designed for mammography and must meet radiologic standards established by the Secretary for mammography;

"(B) the mammography must be performed by an individual who—

"(i) is licensed by a State to perform radiological procedures, or

"(ii) is certified as qualified to perform radiological procedures by such an appropriate organization as the Secretary specifies in regulations;

"(C) the results of the mammography must be interpreted by a physician—

"(i) who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies in regulations, or

"(ii) who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation as assuring the qualifications of the individual with respect to such interpretation; and

"(D) with respect to the first screening mammography performed on a woman for which payment is made under this part, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

"(4) LIMIT.—

"(A) $55, INDEXED.—Except as provided by the Secretary under subparagraph (B), the limit established under this paragraph—

"(i) for screening mammography performed in 1991, is $55, and

"(ii) for screening mammography performed in a subsequent year is the limit established under this paragraph for the preceding year increased by the percentage increase in the MEI for that subsequent year.

"(B) REDUCTION OF LIMIT.—The Secretary shall review from time to time the appropriateness of the amount of the limit established under this paragraph. The Secretary may, with respect to screening mammography performed in a year after 1992, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that screening mammography of an appropriate quality is readily and conveniently available during the year.

"(C) APPLICATION OF LIMIT IN HOSPITAL OUTPATIENT SETTING.—The Secretary shall provide for an appropriate allocation of the limit established under this paragraph between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where there is a claim for professional services separate from the claim for the radiologic procedure.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of mammography screening performed on or after January 1, 1991, for which payment is made under this subsection, if a nonparticipating physician or supplier provides the screening to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B), or if less, as defined in subsection (b)(5)(B) or as defined in section 1848(g)(2)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to screening mammography performed—

"(i) in 1991, 125 percent of the limit established under paragraph (4),

"(ii) in 1992, 120 percent of the limit established under paragraph (4), or

"(iii) after 1992, 115 percent of the limit established under paragraph (4).

"(C) ENFORCEMENT.—If a physician or supplier knowing and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(c) CERTIFICATION OF SCREENING MAMMOGRAPHY QUALITY STANDARDS.—

(1) Section 1863 of such Act (42 U.S.C. 1395z) is amended by inserting "or whether screening mammography meets the standards established under section 1834(c)(3)," after "1832(a)(2)(F)(i),".

(2) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting before the period the following: ", or whether screening mammography meets the standards established under section 1834(c)(3)".

(3) Section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by inserting "1834(c)(3)," after "1832(a)(2)(F)(i),".

(d) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(2)(E) of such Act (42 U.S.C. 1395l(a)(2)(E)) is amended by inserting ", but excluding screening mammography" after "imaging services".

(2) Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "subparagraph (B), (C), (D), or (E)" and inserting "a succeeding subparagraph",

(ii) in subparagraph (D), by striking "and" at the end,

(iii) in subparagraph (E), by striking the semicolon at the end and inserting ", and", and

(iv) by adding at the end the following new subparagraph:

"(F) in the case of screening mammography, which is performed more frequently than is covered under section 1834(c)(2) or which does not meet the standards established under section 1834(c)(3), and, in the case of screening pap smear, which is performed more frequently than is provided under section 1861(nn);"; and

(B) in paragraph (7), by inserting "or under paragraph (1)(F)" after "(1)(B)".

42 USC 1395*l* note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to screening mammography performed on or after January 1, 1991.

SEC. 4164. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART B.

(a) EXTENSION OF DEMONSTRATIONS.—

42 USC 1395b-1 note.

(1) PREVENTION DEMONSTRATIONS.—Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9344 of the Omnibus Budget Reconciliation Act of 1986, is amended—

(A) in subsection (a), by striking "4-year" and inserting "5-year";

(B) in subsection (e)(2), by striking "Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report" and inserting "Not later than April 1, 1993, the Secretary shall submit an interim report";

(C) in subsection (e), by adding at the end the following new paragraph:

"(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.".[17];

(D) in subsection (f), by striking "$5,900,000" and inserting "$7,500,000"; and

[17] So in original. Probably should be "program.";".

(E) in subsection (f), by inserting before the period at the end the following: "and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)".

(2) ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.—Section 9342 of the Omnibus Budget Reconciliation Act of 1986 is amended— 42 USC 1395b-1 note.

(A) in subsection (c)(1), by striking "3 years" and inserting "4 years";

(B) in subsection (d)(1), by striking "third year" and inserting "fourth year";

(C) in subsection (f)—

(i) by striking "$40,000,000" and inserting "$55,000,000", and

(ii) by striking "$2,000,000" and inserting "$3,000,000".

(b) DISCLOSURE OF OWNERSHIP.—

(1) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1124 the following new section:

"DISCLOSURE REQUIREMENTS FOR OTHER PROVIDERS UNDER PART B OF MEDICARE

"SEC. 1124A. (a) DISCLOSURE REQUIRED TO RECEIVE PAYMENT.—No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information— 42 USC 1320a-3.

"(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest; and

"(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

"(A) on the identity of any other entities providing items or services for which payment may be made under title XVIII of the Social Security Act with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

"(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1128, 1128A, or 1128B.

"(b) UPDATES TO INFORMATION SUPPLIED.—A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) not later than 180 days after such changes or updates take effect.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'disclosing part B provider' means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B of title XVIII, except that such term does not include an entity described in section 1124(a)(2);

"(2) the term 'managing employee' means, with respect to a provider, a person described in section 1126(b); and

"(3) the term 'person with an ownership or control interest' means, with respect to a provider—

"(A) a person described in section 1124(a)(3), or

"(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.".

(2) CRIMINAL PENALTY FOR PROVIDING FALSE INFORMATION.—Section 1128B(c) of such Act (42 U.S.C. 1320a-7b(c)) is amended by striking "health care program" and inserting "health care program, or with respect to information required to be provided under section 1124A,".

(3) FAILURE TO PROVIDE INFORMATION AS GROUNDS FOR PERMISSIVE EXCLUSION FROM PROGRAM.—Section 1128(b)(9) of such Act (42 U.S.C. 1320a-7(b)(9)) is amended by striking "1124" and inserting "1124, section 1124A,".

42 USC 1320a-3a note.

(4) EFFECTIVE DATE.—The amendments made by paragraph (1), (2), and (3) shall apply with respect to items or services furnished on or after—

(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act, has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act; or

(B) January 1, 1992, in the case of items or services furnished by any other provider.

42 USC 1395u note.

(c) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Not later than March 31, 1991, the Secretary of Health and Human Services shall publish a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addressess of all listed physicians.

PART 3—PROVISIONS RELATING TO PARTS A AND B

SEC. 4201. PROVISIONS RELATING TO END STAGE RENAL DISEASE.

42 USC 1395rr note.

(a) INCREASE IN COMPOSITE RATES.—Section 9335(a)(1) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6203(a)(1) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(1) by striking "October 1, 1990," and inserting "December 31, 1990,"; and

(2) by inserting after the first sentence the following: "With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989), increased by $1.00.".

42 USC 1395rr note.

(b) PROPAC STUDY ON ESRD COMPOSITE RATES.—

(1) IN GENERAL.—

(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease

patients provided under title XVIII of the Social Security Act.

(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

(i) hemodialysis and other modalities of treatment,

(ii) the appropriate services to be included in such payments,

(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus freestanding facilities, urban versus rural, size and mix of services,

(iv) adjustments for labor and nonlabor costs,

(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) ANNUAL REPORT.— The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

(c) PAYMENT RATES FOR ERYTHROPOIETIN.—

(1) IN GENERAL.—Section 1881(b)(11) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended—

(A) by striking "(11)" and inserting "(11)(A)"; and

(B) by adding at the end the following new subparagraph:

"(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and payment for such item shall be made separately—

"(i) in the case of erythropoietin provided by a physician, in accordance with section 1833; and

"(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

"(I) for erythropoietin provided during 1991, in an amount equal to $11 per thousand units (rounded to the nearest 100 units), and

"(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.".

42 USC 1395rr note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to erythropoietin furnished on or after January 1, 1991.

(d) SELF-ADMINISTERED ERYTHROPOIETIN.—

(1) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) as amended by section 4156(a)(1), is amended—

(A) by striking "and" at the end of subparagraph (N);

(B) by adding "and" at the end of subparagraph (O); and

(C) by adding at the end the following new subparagraph:

"(P) erythropoietin for home dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;".

(2) COVERAGE FOR METHOD II PATIENTS.—Section 1881(b) (42 U.S.C. 1395rr(b)) is further amended—

(A) in paragraph (1)—

(B) by striking "and (B)" and inserting "(B),[18] and

(C) by striking "equipment." and inserting "equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1861(s)(2)(Q) if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section).";

(3) by adding at the end of paragraph (11), as amended by subsection (c), the following new subparagraph:

"(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.".

42 USC 1395x note.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items and services furnished on or after July 1, 1991.

42 USC 1395rr note.

SEC. 4202. STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—

[18] So in original. Probably should be " "(B)", ".

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a home hemodialysis staff assistant provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term "services of a home hemodialysis staff assistant" means—

(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

(2) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility (as adjusted to reflect differences in area wage levels), and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home

hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (ii)(II)—

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

(A) the individual is not a resident of a skilled nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(4); and

(F) no family member or other individual is available to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act, is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date

under such title on the same terms and conditions as applied under the demonstration project.

(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(e) REPORTS.—

(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

(1) For fiscal year 1991, $4,000,000.
(2) For fiscal year 1992, $4,000,000.
(3) For fiscal year 1993, $3,000,000.
(4) For fiscal year 1994, $2,000,000.
(5) For fiscal year 1995, $1,000,000.

SEC. 4203. EXTENSION OF SECONDARY PAYOR PROVISIONS.

(a) EXTENSION OF TRANSFER OF DATA.—

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(2) Section 6103(l)(12)(F) of the Internal Revenue Code of 1986 is amended— 26 USC 6103.

(A) in clause (i), by striking "September 30, 1991" and inserting "September 30, 1995";

(B) in clause (ii)(I), by striking "1990" and inserting "1994"; and

(C) in clause (ii)(II), by striking "1991" and inserting "1995".

(b) EXTENSION OF APPLICATION TO DISABLED BENEFICIARIES.—Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking "January 1, 1992" and inserting "October 1, 1995".

(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—

(1) IN GENERAL.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(A) in clause (i), by striking "during the 12-month period" and all that follows and inserting "during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A under

the provisions of section 226A, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 226A if the individual had filed an application for such benefits; and"

(B) in the matter following clause (ii), by adding at the end the following: "Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.".

42 USC 1395y note.

(2) GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD.—(A) The Comptroller General shall conduct a study of the impact of the application of clause (iii) of section 1862(b)(1)(C) of the Social Security Act on individuals entitled to benefits under title XVIII of such Act by reason of section 226A of such Act, and shall include in such report information relating to—

(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

(ii) the amount of savings to the medicare program achieved annually by reason of the application of such clause;

(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary;

(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) to all group health plans.

(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.

26 USC 6103 note.

(d) EFFECTIVE DATE.—The amendments made this subsection shall take effect on the date of the enactment of this Act and the amendment made by subsection (a)(2)(B) shall apply to requests made on or after such date.

SEC. 4204. HEALTH MAINTENANCE ORGANIZATIONS.

(a) REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.—

(1) IN GENERAL.—Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

"(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to

reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

"(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

"(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

"(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

"(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

"(B) In this paragraph, the term 'physician incentive plan' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.".

(2) PENALTIES.—Section 1876(i)(6)(A)(vi) (42 U.S.C. 1395mm(i)(6)(A)(vi)) is amended by striking "(g)(6)(A);" and inserting "(g)(6)(A) or paragraph (8);".

(3) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended—

(A) by striking ", an eligible organization" and all that follows through "section 1876,",

(B) by adding "and" at the end of subparagraph (A),

(C) by striking subparagraph (B),

(D) by redesignating subparagraph (C) as subparagraph (B), and

(E) by striking "or organization".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) shall take effect on the date of the enactment of this Act. 42 USC 1395mm note.

(b) REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC.—(1) Not later than January 1, 1992, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall submit a proposal to Congress that provides for a modified payment method for organizations with a risk contract under section 1876(g) of the Social Security Act that is more accurate than the current payment methodology in predicting the actual service utilization and annual medical expenditures of the beneficiary population enrolled in a specific organization. 42 USC 1395mm note.

(2) The proposal shall include—

(A)(i) recommendations on modifying the current adjusted average per capita cost formula, by adding predictors of medical

utilization such as health status adjustors or prior utilization measures; or

(ii) recommendations for a new payment methodology as an alternative to the adjusted average per capita cost;

(B) data to support any recommended changes in payment methodology for organizations with risk contracts under section 1876(g) of the Social Security Act; and

(C) analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(3) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule providing for the implementation of the payment methodology specified in the proposal submitted pursuant to paragraph (1).

(4) Not later than May 1, 1992, the Comptroller General shall review the proposal and recommendations made pursuant to paragraphs (1) and (2), and shall report to Congress on appropriate modifications in such payment methodology.

(5) Taking into account the recommendations made pursuant to paragraph (4), on or after August 1, 1992, the Secretary shall issue a final rule implementing a payment methodology that meets the requirements of paragraph (1), effective for contract years beginning on or after January 1, 1993.

(c) APPLICATION OF NATIONAL COVERAGE DECISIONS.—

(1) IN GENERAL.—Section 1876(c)(2) (42 U.S.C. 1395mm(c)(2)) is amended—

(A) by redesignating clauses (i) and (ii) and subparagraphs (A) and (B) as subclauses (I) and (II) and clauses (i) and (ii), respectively;

(B) by inserting "(A)" after "(2)"; and

(C) by adding at the end the following new subparagraph:

"(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant [19] change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

"(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

"(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.".

(2) CONFORMING AMENDMENT.—Section 1876(a)(6) of such Act is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

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[19] So in original. Probably should be "significant".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act. 42 USC 1395mm note.

(d) PAYMENTS FOR SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—

(1) IN GENERAL.—Section 1876(j) (42 U.S.C. 1395mm(j)) is amended—

(A) in paragraph (1)(A)—

(i) by striking "physician" each place it appears and inserting "physician or provider of services or renal dialysis facility",

(ii) by striking "physicians' services" and inserting "physicians' services or renal dialysis services", and

(iii) by striking "participation agreement under section 1842(h)(1)" and inserting "applicable participation agreement",

(B) in paragraph (2)—

(i) by striking "physicians' services" each place it appears and inserting "physicians' services or renal dialysis services", and

(ii) by striking "which—" and all that follows and inserting "which are furnished to an enrollee of an eligible organization under this setion [20] by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1991. 42 USC 1395mm note.

(e) RETROACTIVE ENROLLMENT.—

(1) IN GENERAL.—Section 1876(a)(1)(E) (42 U.S.C. 1395mm(a)(1)(E)) is amended—

(A) by striking "(E)" and inserting "(E)(i)"; and

(B) by adding at the end the following new clause:

"(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

"(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) at the time the individual enrolled with the organization.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to individuals enrolling with an eligible organization (which has a risk-sharing contract under section 1876 of the Social Security Act) under a health benefit plan operated, sponsored, or contributed to, by the individual's em- 42 USC 1395mm note.

[20] So in original. Probably should be "section".

ployer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.

42 USC 1395mm note.

(f) STUDY OF CHIROPRACTIC SERVICES.—

(1) The Secretary shall conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act make available to enrollees entitled to benefits under title XVIII of such Act chiropractic services that are covered under such title.

(2) The study shall examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees.

(3) The study shall be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993.

(4) The Secretary shall issue a final report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the study not later than January 1, 1993. The report shall include recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services.

(g) PROHIBITING CERTAIN EMPLOYER MARKETING ACTIVITIES.—

(1) IN GENERAL.—Section 1862(b)(3) (42 U.S.C. 1395y(b)(3)) is amended by adding at the end the following new subparagraph:

"(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN.—It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this title not to enroll (or to terminate enrollment) under a group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)), unless such incentive is also offered to all individuals who are eligible for coverage under the plan. Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

42 USC 1395y note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to incentives offered on or after the date of the enactment of this Act.

SEC. 4205. PEER REVIEW ORGANIZATIONS.

(a) USE OF CORRECTIVE ACTION PLANS.—

(1) IN GENERAL.—Section 1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended—

(A) by inserting "and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan," after "concerned,"; and

(B) by inserting after the second sentence the following: "In determining whehter [21] a practitioner or person has demonstrated an unwillingness or lack of ability substan-

[21] So in original. Probably should be "whether".

tially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to initial determinations made by organizations on or after the date of the enactment of this Act. 42 USC 1320c-5 note.

(b) TREATMENT OF OPTOMETRISTS AND PODIATRISTS.—

(1) IN GENERAL.—Section 1154 (42 U.S.C. 1320c-3) is amended—

(A) in subsection (a)(7)(A)(i), by inserting ", optometry, and podiatry" after "dentistry"; and

(B) in subsection (c), by striking "or dentistry" each place it appears and inserting "dentistry, optometry, or podiatry".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act. 42 USC 1320c-3 note.

(c) COORDINATION OF PROS AND CARRIERS.— 42 USC 1320c note.

(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

(A) the development of common utilization and medical review criteria;

(B) criteria for the targetting of reviews by peer review organizations and carriers; and

(C) improved methods for exchange of information among peer review organizations and carriers.

(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.

(d) PEER REVIEW NOTICE.—

(1) NOTICE OF PROPOSED SANCTIONS.—

(A) REQUIREMENT.—Section 1154(a)(9) (42 U.S.C. 1320c-3(a)(9)) is amended—

(i) by inserting "(A)" after "(9)"; and

(ii) by adding at the end the following:

"(B) If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.".

(B) DISCLOSURE.—Section 1160(b)(1) (42 U.S.C. 1320c-9(b)(1)) is amended—

(i) by striking "and" at the end of subparagraph (B),

(ii) by adding "and" at the end of subparagraph (C), and

(iii) by adding at the end the following new subparagraph:

"(D) to provide notice to the State medical board in accordance with section 1154(a)(9)(B) when the organization submits a report and recommendations to the Secretary

under section 1156(b)(1) with respect to a physician whom the board is responsible for licensing;".

42 USC 1320c-3 note.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act.

(2) NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN BY SECRETARY.—

(A) IN GENERAL.—Section 1156(b) (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.".

42 USC 1320c-5 note.

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to sahctions effected more than 60 days after the date of the enactment of this Act.

(e) CONFIDENTIALITY OF PEER REVIEW DELIBERATIONS.—

(1) IN GENERAL.—Section 1160(d) (42 U.S.C. 1320c-9(d)) is amended by adding at the end the following: "No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1154(a)(1)(B) or 1156(a)(2) shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.".

42 USC 1320c-9 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to all proceedings as of the date of the enactment of this Act.

(f) CLARIFICATION OF LIMITATION ON LIABILITY.—Section 1157(b) (42 U.S.C. 1320c-6(b)) is amended—

(1) by inserting "organization having a contract with the Secretary under this part and no" after "No",

(2) by striking "by him", and

(3) by striking "he has exercised due care" and inserting "due care was exercised in the performance of such duty, function, or activity".

(g) MISCELLANEOUS AND TECHNICAL AMENDMENTS RELATING TO PEER REVIEW ORGANIZATIONS.—

(1) CLARIFICATION OF PATIENT NOTIFICATION REQUIREMENTS FOR DENIAL OF PAYMENT BY PRO.—

(A) IN GENERAL.—Section 1154(a)(3)(E) (42 U.S.C. 1320c-3(a)(3)(E)) is amended—

(i) by striking "(E)" and inserting "(E)(i)";

(ii) by inserting after "items" the following: "provided by a physician that were";

(iii) by striking "physician and hospital." and inserting "physician."; and

(iv) by adding at the end the following new clause:

"(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term 'physician' in the notice described in clause (i).".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconiliation [22] Act of 1989. 42 USC 1320c-3 note.

(2) CLARIFICATION OF APPLICATION OF CRITERIA FOR DENIAL OF PAYMENT.—

(A) IN GENERAL.—Section 1154(a)(2) (42 U.S.C. 1320c-3(a)(2)) is amended by striking the third sentence and inserting the following: "The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985. 42 USC 1320c-3 note.

SEC. 4206. MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subsection (a)(1)—

(A) by striking "and" at the end of subparagraph (O),

(B) by striking the period at the end of subparagraph (P) and inserting ", and", and

(C) by inserting after subparagraph (P) the following new subparagraph:

"(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) (relating to maintaining written policies and procedures respecting advance directives).";

and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(r), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the written policies of the provider or organization respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State)

[22] So in original. Probably should be "Reconciliation".

respecting advance directives at facilities of the provider or organization; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of an eligible organization (as defined in section 1876(b)) or an organization provided payments under section 1833(a)(1)(A), at the time of enrollment of the individual with the organization.

"(3) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.".

(b) APPLICATION TO PREPAID ORGANIZATIONS.—

(1) ELIGIBLE ORGANIZATIONS.—Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

"(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) OTHER PREPAID ORGANIZATIONS.—Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

42 USC 1395cc note.

(c) EFFECT ON STATE LAW.—Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

(d) CONFORMING AMENDMENTS.—

(1) Section 1819(c)(1) of such Act (42 U.S.C. 1395i-3(c)(1)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A skilled nursing facility must comply with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) Section 1891(a) of such Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

"(6) The agency complies with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (d) shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act. 42 USC 1395i-3 note.

(2) The amendments made by subsection (b) shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning more than 1 year after the date of the enactment of this Act. 42 USC 1395*l* note.

SEC. 4027. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PARTS A AND B.

(a) HOSPITAL AND PHYSICIAN OBLIGATIONS WITH RESPECT TO EMERGENCY MEDICAL CONDITIONS.—

(1) PEER REVIEW.—(A) Section 1867(d) (42 U.S.C. 1395dd(d)), as amended by section 4008(b)(3), is amended by adding at the end the following new paragraph:

"(3) CONSULTATION WITH PEER REVIEW ORGANIZATIONS.—In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of title XI) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review.[23]

(B) Section 1154(a) (42 U.S.C. 1320c-4(a)) is amended by adding at the end the following new paragraph: 42 USC 1320c-3 note.

"(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1867(d)(3). The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.".

(C) The amendment made by subparagraph (A) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act. The amendment made by subparagraph (B) shall apply to contracts under part B of title XI of the Social Security Act as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act. 42 USC 1320c-3 note.

(2) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowingly" and inserting "negligently".

(3) EXCLUSION.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowing and willful or negligent" and inserting "is gross and flagrant or is repeated".

[23] So in original. Probably should be "review.".

42 USC 1395dd note.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(b) EXTENSIONS OF EXPIRING PROVISIONS.—

42 USC 1395ww note.

(1) PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974) of more than $50,000,000, except as follows:

(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

42 USC 1395ww note.

(2) PROHIBITION OF PAYMENT CYCLE CHANGES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

42 USC 1395pp note.

(3) WAIVER OF LIABILITY FOR HOME HEALTH AGENCIES.—Section 9305(g)(3) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 426(d) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(4) EXTENSION AND EXPANSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(A) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 is amended—

(i) in paragraph (1), by striking "September 30, 1992" and inserting "December 31, 1995"; and

(ii) in paragraph (4)—

(I) by striking "final" and inserting "second interim", and

(II) by striking the period at the end and inserting the following: ", and shall submit a final report on the demonstration projects conducted under section 2355 of the Deficit Reduction Act of 1984 not later than March 31, 1996.".

(B) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(i) in subsection (a), by adding at the end the following: "Not later than 12 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990, the Secretary shall approve such applications or protocols for not more than 4 additional projects described in subsection (b).";

(ii) by amending paragraph (1) of subsection (b) to read as follows:

"(1) to demonstrate—

"(A) the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1-04 of the University Health Policy Consortium of Brandeis University, or

"(B) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, the effectiveness and feasibilitly [24] of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness of feasibility of—

"(i) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers;

"(ii) refining targeting or reimbursement methodologies;

"(iii) the establishment and operation of a rural services delivery system; or

"(iv) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery;";

(iii) in subsection (b)—

(I) by inserting "and" at the end of paragraph (3),

(II) by striking the semicolon at the end of paragraph (4) and inserting a period, and

(III) by striking paragraphs (5), (6), and (7).[25]

(iv) in subsection (c)—

(I) by striking "and" at the end of paragraph (1),

(II) by striking the period at the end of paragraph (2) and inserting "; and", and

(III) by adding at the end the following new paragraph:

"(3) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted."; and

(v) by adding at the end the following new subsection:

"(e) There are authorized to be appropriated $3,500,000 for the costs of technical assistance and evaluation related to projects conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990.".

(c) DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES.— 42 USC 1395x note.

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to

[24] So in original. Probably should be "feasibility".
[25] So in original. Probably should be "(7);".

replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) REPORTS.—(A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) HOME HEALTH WAGE INDEX.—

(1) IN GENERAL.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended to read as follows:

"(iii) Not later than July 1, 1991, and annually thereafter, the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1886(d)(3)(E) as of such date to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B), a decision of the Medicare Geographic Classification Review Board under section 1886(d)(10), or a decision of the Secretary).".

42 USC 1395x note.

(2) APPLICATION ON BUDGET-NEUTRAL BASIS.—In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii)

of the Social Security Act, the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act will be no greater or lesser than such payments would have been without regard to such update.

(3) TRANSITION PROVISION.—Notwithstanding section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of such Act with respect to services furnished by a home health agency, utilize a wage index equal to— 42 USC 1395x note.

(A) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of—

(i) 67 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 33 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section; and

(B) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of—

(i) 33 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 67 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991. 42 USC 1395x note.

(e) CLARIFICATION OF DEFINITIONS AND REPORTING REQUIREMENTS RELATING TO PHYSICIAN OWNERSHIP AND REFERRAL.—

(1) CLARIFYING DEFINITIONS.—Section 1877(h) of the Social Security Act (42 U.S.C. 1395nn(h)) is amended—

(A) in paragraph (6)(A), by striking "in the case of" and all that follows through "the service," and inserting "in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service,";

(B) in paragraph (6)(B), by striking "in the case of another clinical laboratory service,", and

(C) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) INVESTOR.—The term 'investor' means, with respect to an entity, a person with a financial relationship specified in subsection (a)(2) with the entity.".

(2) EXEMPTION FOR FINANCIAL RELATIONSHIPS WITH HOSPITAL UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—Section 1877(b) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of clinical laboratory services.".

(3) REVISION OF REPORTING REQUIREMENTS.—Section 1877(f) (42 U.S.C. 1395nn(f)) is amended—

(A) by amending paragraph (2) to read as follows:

"(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)) in the entity, or whose immediate relatives have such an ownership or investment.";

(B) in the third sentence, by striking "1 year after the date of the enactment of this section" and inserting "October 1, 1991"; and

(C) by adding at the end the following new sentences: "The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.".

42 USC 1395nn note.

(4) DATE OF ISSUANCE OF REPORTS AND REGULATIONS.—(A) Section 6204 of the Omnibus Budget Reconciliation Act of 1989 is amended by striking subsection (f) and inserting the following:

"(f) STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION.—Not later than June 30, 1992, the Secretary of Health and Human Services shall submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in section 1877(f) of the Social Security Act (other than entities providing clinical laboratory services).".

42 USC 1395nn note.

(B) Section 6204(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "October 1, 1990" and inserting "October 1, 1991".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989. 42 USC 1395nn note.

(f) CASE MANAGEMENT DEMONSTRATION PROJECT.— 42 USC 1395b-1 note.

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (in this subsection referred to as "MCCA").

(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18-P-99379/5-01;

(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P-99399/4-01; and

(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18-P-99396/5.

(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.

(g) PROHIBITION OF USER FEES FOR SURVEY AND CERTIFICATION.—Section 1864 (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a), or any renal dialysis facility subject to the requirements of section 1881(b)(1), for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this title.".

(h) DELEGATION OF AUTHORITY TO INSPECTOR GENERAL.—Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended—

(i) by striking "(j)" and inserting "(j)(1)"; and

(ii) by adding at the end the following new paragraph:

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

(i) MODIFICATION OF HOME HEALTH AGENCY DEFICIENCY STANDARDS.—

(1) IN GENERAL.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section

1891(a)(3)(D)(iii) of the Social Security Act (42 U.S.C. 1395bbb(a)(3)(D)(iii)) is amended by striking "which has been determined" and all that follows and inserting the following: "which, within the previous 2 years—

"(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

"(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D);

"(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of not less than $5,000; or

"(IV) has been subject to the remedies described in subsection (e)(1) or in clauses (ii) or (iii) of subsection (f)(2)(A).".

42 USC 1395bbb note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act;

(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title.[26]

(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

(v) pursuant to State action, was closed or had its residents transferred.

42 USC 1395hh note.

(j) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this title and the amendments made by this title.

(k) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) The third sentence of subsections (a) and (b)(1) of section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 203(a)(1)(A) of the Medicare Catastrophic Coverage Repeal Act, is amended by striking "(k)(4),".

42 USC 1395nn.

(2) Section 1877(g)(5) of the Social Security Act, as added by section 6204(a) of OBRA-1989, is amended by adding at the end the following new sentence: "The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

42 USC 1395dd.

(3) Subsection (i) of section 1867 of the Social Security Act, as added by section 6211(f) of the Omnibus Budget Reconciliation Act of 1989, is amended to read as follows:

"(i) WHISTLEBLOWER PROTECTIONS.—A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) or a physician because the

[26] So in original. Probably should be ";".

person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.".

(4) Section 6213(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "take effect" and inserting "apply to services furnished on or after". 42 USC 1395x note.

(5) Section 6217(a) of the Omnibus Budget Reconciliation Act of 1989 is amended in the matter preceding paragraph (1) by inserting after "payments" the following: "out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)". 42 USC 1395ww note.

(6) Section 1139(d) of the Social Security Act, as amended by section 6221 of Omnibus Budget Reconciliation Act of 1989, is amended by striking "interim report" and all that follows through "setting forth" and inserting the following: "interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth". 42 USC 1320b-9.

PART 4—PROVISIONS RELATING TO MEDICARE PART B PREMIUM AND DEDUCTIBLE

SEC. 4301. PART B PREMIUM.

Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is amended—

(1) by inserting "(A)" after "(e)(1)", and

(2) by adding at the end the following new subparagraph:

"(B) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month in—

"(i) 1991 shall be $29.90,

"(ii) 1992 shall be $31.80,

"(iii) 1993 shall be $36.60,

"(iv) 1994 shall be $41.10, and

"(v) 1995 shall be $46.10.".

SEC. 4302. PART B DEDUCTIBLE.

Section 1833(b) (42 U.S.C. 1395l) is amended by inserting after "$75" the following: "for calendar years before 1991 and $100 for 1991 and subsequent years".

PART 5—MEDICARE SUPPLEMENTAL INSURANCE POLICIES

SEC. 4351. SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1)(B), by striking "through (4)" and inserting "through (5)";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting "; and", and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) meets the applicable requirements of subsections (o) through (t).''; and

(3) by adding at the end the following new subsections:

"(o) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p).

"(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B), the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

"(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

"(p)(1)(A) If, within 9 months after the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection referred to as the 'Association') promulgates—

"(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

"(ii) uniform language and definitions to be used with respect to such benefits,

"(iii) uniform format to be used in the policy with respect to such benefits, and

"(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'), subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the NAIC standards.

"(B) If the Association does not promulgate NAIC standards within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards') and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the Federal standards.

"(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the NAIC standards or the Federal standards or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

"(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the NAIC or Federal standards, but

"(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, 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.

"(D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

"(E) If benefits (including deductibles and coinsurance) under this title are changed and the Secretary determines, in consultation with the Association, that changes in the NAIC or Federal standards are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

"(2) The benefits under the NAIC or Federal standards shall provide—

"(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

"(B) for identification of a core group of basic benefits common to all policies, and

"(C) that, subject to paragraph (5)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

"(3) The benefits under paragraph (2) shall, to the extent possible—

"(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of the date of the enactment of this subsection; and

"(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

"(4)(A)(i) Except as provided in subparagraph (B), no State with a regulatory program approved under subsection (b)(1) may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable standards.

"(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable standards.

"(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the

applicable standards. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

"(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

"(B) A State with a regulatory program approved under subsection (b)(1) may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

"(6) The Secretary may waive the application of standards in regard to the limitation of benefits described in paragraph (4) in those States that on the date of enactment of this subsection had in place an alternative simplification program.

"(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholder or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

"(8) Any person who sells or issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

"(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the NAIC or Federal standards under this subsection.

"(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with this subsection.".

SEC. 4352. GUARANTEED RENEWABILITY.

Section 1882 is amended by adding at the end the following new subsection: 42 USC 1395ss.

"(q) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall be guaranteed renewable and—

"(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

"(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

"(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (2), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

"(A) provides for continuation of the benefits contained in the group policy, or

"(B) provides for such benefits as otherwise meets the requirements of this section.

"(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

"(A) offer the certificateholder the conversion opportunity described in paragraph (2), or

"(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

"(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.".

SEC. 4353. ENFORCEMENT OF STANDARDS.

(a) REQUIRING CONFORMITY WITH STANDARDS.—Section 1882 is amended—

(1) in the heading, by striking "VOLUNTARY"; and

(2) in subsection (a)—

(A) by inserting "(1)" after "(a)",

(B) by adding at the end the following new paragraph:

"(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) unless—

"(A) the State's regulatory program under subsection (b)(1) provides for the application and enforcement of the standards and requirements set forth in such subsection (including the NAIC standards or the Federal standards (as the case may be)) by the date specified in subsection (p)(1)(C); or

"(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the

policy, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

42 USC 1395ss.

(b) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS.—Section 1882(b) is amended—

(1) in paragraph (1), by striking "Supplemental Health Insurance Panel (established under paragraph (2))" and inserting "the Secretary",

(2) in paragraph (1), by striking "the Panel" and inserting "the Secretary",

(3) in subparagraphs (A) and (D) of paragraph (1), by inserting "and enforcement" after "application", and

(4) by amending paragraph (2) to read as follows:

"(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.".

(c) ENFORCEMENT BY STATES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by inserting "and" at the end of subparagraph (E);

(3) by inserting after subparagraph (E) the following:

"(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,"; and

(5) by adding at the end the following new sentence: "The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.".

(d) REQUIRING APPROVAL OF STATE FOR SALE IN THE STATE.—

(1) IN GENERAL.—Section 1882(d)(4)(B) (42 U.S.C. 1395ss(d)(4)(B)) is amended by striking the second sentence.

42 USC 1395ss note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.

SEC. 4354. PREVENTING DUPLICATION.

(a) IN GENERAL.—Subsection (d)(3) of section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subparagraph (A)—

(A) by striking "Whoever knowingly sells" and inserting "It is unlawful for a person to sell or issue",

(B) by striking "substantially",

(C) by striking ", shall be fined" and inserting ". Whoever violates the previous sentence shall be fined",

(D) in subparagraph (A), by inserting "or title XIX" after "other than this title",

(E) in subparagraph (A), by striking "$5,000" and inserting "$25,000 (or $15,000 in the case of a person other than the issuer of the policy)", and

(F) by adding at the end the following: "A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p).";

(2) by amending subparagraph (B) to read as follows:

"(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A or enrolled under part B, whether directly, through the mail, or otherwise, unless—

"(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under title XIX, whether as a qualified medicare beneficiary or otherwise, and

"(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

"(ii) The statement required by clause (i) shall be made on a form that—

"(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

"(II) states in substance that individuals 65 years of age or older may be eligible for benefits under the State medicaid program under title XIX and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such title and may be reinstituted upon loss of such entitlement, and

"(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

"(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has another medicare supplemental policy or indicates that the individual is entitled to any medical assistance under title

XIX, the sale of such a policy shall be considered to be a violation of subparagraph (A).

"(II) Subclause (I) shall not apply in the case of an individual who has another policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer or seller's knowledge, duplicate coverage (taking into account any such replacement).

"(III) Subclause (I) also shall not apply if a State medicaid plan under title XIX pays the premiums for the policy, or pays less than an individual's (who is described in section 1905(p)(1)) full liability for medicare cost sharing as defined in section 1905(p)(3)(A).

"(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.".

(b) SUSPENSION OF POLICY DURING MEDICAID ENTITLEMENT.—Section 1882(q), as added by section 4352, is amended by adding at the end the following new paragraph:

"(5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under title XIX of the Social Security Act, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

"(B) Nothing in this section shall be construed as affecting the authority of a State, under title XIX of the Social Security Act, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such title.

"(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

42 USC 1395ss note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act.

SEC. 4355. LOSS RATIOS AND REFUND OF PREMIUMS.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended—

(1) in subsection (c), by amending paragraph (2) to read as follows:

"(2) meets the requirements of subsection (r);";

(2) by striking the sentence following subsection (c)(4); and

(3) by adding at the end the following new subsection:

"(r)(1) A medicare supplemental policy may not be issued or sold in any State unless—

"(A) the policy can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners [27], to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

"(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A).

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

"(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by policy number. Paragraph (1)(B) shall not apply to a policy with respect to the first 2 years in which it is in effect. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustments in the percentages under paragraph (1)(A) that may be appropriate in order to apply paragraph (1)(B) to the first 2 years in which policies are effective.

"(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

"(C) Such a refund or credit shall include interest from the end of the policy year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

"(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a policy year, not later than the third quarter of the succeeding policy year.

"(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

"(4) The Secretary shall submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss-ratios under medicare supplemental policies and the use of sanctions, such as a required

[27] So in original. Probably should be "Commissioners),".

rebate or credit or the disllowance [28] of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss-ratios). Such report shall include a list of the policies that failed to comply with such loss-ratio requirements or other requirements of this section.

"(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

"(B) The Secretary may independently perform such compliance audits.

"(6)(A) A person who issues a policy in violation of the loss ratio requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to policyholders for credits required under such paragraph.".

(b) ASSURING ACCESS TO LOSS RATIO INFORMATION.—Section 1882(b)(1)(C) (42 U.S.C. 1395ss(b)(1)(C)) is amended by striking the semicolon at the end and inserting a comma and the following:

"and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;".

(c) IMPLEMENTATION OF PROCESS TO APPROVE PREMIUM INCREASES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is further amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by adding "and" at the end of subparagraph (F);

(3) by adding at the end thereof the following new subparagraph:

"(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase,".

42 USC 1395ss note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to policies sold or issued more than 1 year after the date of the enactment of this Act.

SEC. 4356. CLARIFICATION OF TREATMENT OF PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.

(a) IN GENERAL.—The first sentence of section 1882(g)(1) is amended by inserting before the period at the end the following: "and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this title, including such services under a contract under under section 1876 or an agreement under section 1833".

42 USC 1395ss note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

[28] So in original. Probably should be "disallowance".

SEC. 4357. PRE-EXISTING CONDITION LIMITATIONS AND LIMITATION ON MEDICAL UNDERWRITING.

(a) IN GENERAL.—Section 1882 is amended—

(1) in subsection (c), in the matter before paragraph (1), by inserting "or the requirement described in subsection (s)" after "paragraph (3)", and

(2) by adding at the end the following new subsection:

"(s)(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

"(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition for which an application is submitted during the 6 month period beginning with the first month in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B.

"(B) Subject to subparagraph (C), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

"(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

"(3) Any issuer of a medicare supplemental policy that fails to meet the requirements of paragraphs (1) and (2) is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act. 42 USC 1395ss note.

SEC. 4358. MEDICARE SELECT POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following:

"(t)(1) If a policy meets the NAIC Model Standards and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

"(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts with the issuer of the policy;

"(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury,

or condition and it is not reasonable given the circumstances to obtain the services through the network;

"(C) the network offers sufficient access;

"(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

"(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the NAIC standards without reference to this subsection and the premium charged for such policy, and

"(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

"(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the NAIC standards and other requirements of this section without reference to this subsection.

"(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

"(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

"(B) imposes premiums on enrollees in excess of the premiums approved by the State,

"(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

"(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) to determine whether items and services (furnished to individuals entitled to benefits under this title and under that policy) are not allowable under section 1862(a)(1). Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E) of section 1842(b) shall apply to the entity.".

(b) CONFORMING AMENDMENTS.—(1) Section 1882(c)(1) (42 U.S.C. 1395ss(c)(1)) is amended by inserting "(except as otherwise provided by subsection (t))" before the semicolon.

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)), as previously amended, is amended—

(A) in subparagraph (A), by inserting ", except as otherwise provided by subparagraph (H)" before the semicolon;

(B) by striking "and" at the end of subparagraph (F);

(C) by inserting "and" at the end of subparagraph (G); and

(D) by adding after subparagraph (G) the following:

"(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t),".

(3) The first sentence of section 1154(a)(4)(B) (42 U.S.C. 1320c-3(a)(4)(B)) is amended by inserting "(or subject to review under section 1882(t))" after "section 1876".

(c) EFFECTIVE DATE.—The amendments made by this section shall only apply in 15 States (as determined by the Secretary of Health and Human Services) and only during the 3-year period beginning with 1992. 42 USC 1320c-3 note.

(d) EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section and shall report to Congress on such evaluation by not later than January 1, 1995. 42 USC 1395ss note.

SEC. 4359. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES. 42 USC 1395b-3.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the "beneficiary assistance program") to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS.—The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED.—The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1882 of the Social Security Act and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES.—The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT.—The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

42 USC 1395b-4.

SEC. 4360. HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

(a) GRANTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall make grants to States, with approved State regulatory programs under section 1882 of the Social Security Act, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under title XVIII of the Social Security Act (in this section referred to as "eligible individuals"). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) GRANT APPLICATIONS.—

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that pro-

vides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;

(ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act [29] and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the services described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the assistance described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) SPECIAL GRANTS.—

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall main-

[29] So in original. Probably should be "Act)".

tain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section and that such activities will continue to be maintained at such level.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2), the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) CRITERIA FOR ISSUING GRANTS.—In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2), including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under title XIX of the Social Security Act, and

(ii) administering funds appropriated under the Older Americans Act;

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance to the rural areas of such State.

(e) ANNUAL STATE REPORT.—A State that receives a grant under subsection (c) or (d) [30] shall, not later than 180 days after receiving such grant, and annually thereafter, issue an annual report to the Secretary that includes information concerning—

(1) the number of individuals served by the State-wide health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representa-

[30] So in original. Probably should be "(a) or (c)".

tives, and the Select Committee on Aging of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training conferences convened under this section;

(3) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(4) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(5) in the case of the report issued 2 years after the date of enactment of this section, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(f) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, and 1993, to fund the grant programs described in this section.

SEC. 4361. MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1888 the following:

"MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE

"SEC. 1889. The Secretary shall provide information via a toll-free telephone number on the programs under this title and on medicare supplemental policies as defined in section 1882(g)(1) (including the relationship of State programs under title XIX to such policies).". 42 USC 1395zz.

(b) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program. 42 USC 1395zz note.

Subtitle B—Medicaid

PART 1—REDUCTION IN SPENDING

Sec. 4401. Reimbursement for prescribed drugs.
Sec. 4402. Requiring medicaid payment of premiums and cost-sharing for enrollment under group health plans where cost-effective.

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

Sec. 4501. Phased-in extension of medicaid payments for medicare premiums for certain individuals with income below 120 percent of the official poverty line.

PART 3—IMPROVEMENTS IN CHILD HEALTH

Sec. 4601. Medicaid child health provisions.
Sec. 4602. Mandatory use of outreach locations other than welfare offices.
Sec. 4603. Mandatory continuation of benefits throughout pregnancy or first year of life.
Sec. 4604. Adjustment in payment for hospital services furnished to low-income children under the age of 6 years.
Sec. 4605. Presumptive eligibility.
Sec. 4606. Role in paternity determinations.

PART 1—REDUCTIONS IN SPENDING

SEC. 4401. REIMBURSEMENT FOR PRESCRIBED DRUGS.

(a) IN GENERAL.—

(1) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNLESS REBATE AGREEMENTS AND DRUG USE REVIEW IN EFFECT.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or", and

(B) by inserting after paragraph (9) the following new paragraph:

"(10) with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1927(a)(3), the manufacturer complies with the rebate requirements of section 1927(a) with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1927(g).".

(2) PROHIBITING STATE PLAN DRUG ACCESS LIMITATIONS FOR DRUGS COVERED UNDER A REBATE AGREEMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking "and" at the end of paragraph (52),

(B) by striking the period at the end of paragraph (53) and inserting "; and", and

(C) by inserting after paragraph (53) the following new paragraph:

"(54)(A) provide that, any formulary or similar restriction (except as provided in section 1927(d)) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1927(a), which are prescribed for a medically accepted indication (as defined in subsection 1927(k)(6)), and

"(B) comply with the reporting requirements of section 1927(b)(2)(A) and the requirements of subsections (d) and (g) of section 1927.".

(3) REBATE AGREEMENTS FOR COVERED OUTPATIENT DRUGS, DRUG USE REVIEW, AND RELATED PROVISIONS.—Title XIX of the Social Security Act is amended by redesignating section 1927 as section 1928 and by inserting after section 1926 the following new section: 42 USC 1396s.

"PAYMENT FOR COVERED OUTPATIENT DRUGS

"SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT.— 42 USC 1396r-8.

"(1) IN GENERAL.—In order for payment to be available under section 1903(a) for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement

before March 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

"(2) EFFECTIVE DATE.—Paragraph (1) shall first apply to drugs dispensed under this title on or after January 1, 1991.

"(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Paragraph (1), and section 1903(i)(10)(A), shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1-A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d), or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

"(4) EFFECT ON EXISTING AGREEMENTS.—In the case of a rebate agreement in effect between a State and a manufacturer on the date of the enactment of this section, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this title. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on the date of the enactment of this section provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

"(b) TERMS OF REBATE AGREEMENT.—

"(1) PERIODIC REBATES.—

"(A) IN GENERAL.—A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this title, a rebate each calendar quarter (or periodically in accordance with a schedule specified by the Secretary) in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed under the plan during the quarter (or such other period as the Secretary may specify). Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

"(B) OFFSET AGAINST MEDICAL ASSISTANCE.—Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) or an agreement described in subsection (a)(4)) in any quarter shall be considered to be a reduction in the amount ex-

pended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).

"(2) STATE PROVISION OF INFORMATION.—

"(A) STATE RESPONSIBILITY.—Each State agency under this title shall report to each manufacturer not later than 60 days after the end of each calendar quarter and in a form consistent with a standard reporting format established by the Secretary, information on the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter, and shall promptly transmit a copy of such report to the Secretary.

"(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer with an agreement in effect under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each quarter (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1)) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B)) for covered outpatient drugs for the quarter, and

"(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1)) as of October 1, 1990 [31] for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) PENALTIES.—

"(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such

[31] So in original. Probably should be "1990,".

information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

"(ii) FALSE INFORMATION.—Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph is confidential and shall not be disclosed by the Secretary or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.

"(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until such period after the date of the notice as the Secretary may provide (but not beyond the term of the agreement).

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the

date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(c) AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—With respect to single source drugs and innovator multiple source drugs, each manufacturer shall remit a basic rebate to the State medical assistance plan. Except as otherwise provided in this subsection, the amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to each dosage form and strength of single source drugs and innovator multiple source drugs shall be equal to the product of—

"(A) the total number of units of each dosage form and strength dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2); and

"(B)(i) for quarters (or periods) beginning after December 31, 1990, and before January 1, 1993, the greater of—

"(I) the difference between the average manufacturer price (after deducting customary prompt payment discounts) and 87.5 percent of such price for the quarter (or other period), or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug (except that for calendar quarters beginning after December 31, 1990, and ending before January 1, 1992, the rebate shall not exceed 25 percent of the average manufacturer price, and for calendar quarters beginning after December 31, 1991, and ending before January 1, 1993, the rebate shall not exceed 50 percent of the average manufacturer price); and

"(ii) for quarters (or other periods) beginning after December 31, 1992, the greater of—

"(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.

"(C) For the purposes of this paragraph, the term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government). The best price shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount; [32]

"(D) In the case of a covered outpatient drug approved for marketing after October 1, 1990, any reference in this paragraph to 'October 1, 1990' shall be a reference to the first day of the first month during which the drug was marketed.

[32] So in original. Probably should be ".".

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—(A) Each manufacturer shall remit an additional rebate to the State medical assistance plan in an amount equal to:

"(i) For calendar quarters (or other periods) beginning after December 31, 1990 and ending before January 1, 1994—

"(I) the total number of each dosage form and strength of a single source or innovator multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II)(aa) the average manufacturer price for each dosage form and strength, minus

"(bb) the average manufacturer price for each such dosage form and strength in effect on October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved; [33]

"(ii) For calendar quarters (or other periods) beginning after December 31, 1993—

"(I) the total number of each dosage form and strength of a single source or innovative multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II) the amount, if any, by which the weighted average manufacturer price for single source and innovator multiple source drugs of a manufacturer exceeds the weighted average manufacturer price for the manufacturer as of October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved.

"(B)(i) For the purposes of subparagraph (A)(ii), the term 'weighted average manufacturer price' means (with respect to a calendar quarter or other period) the ratio of—

"(I) the sum of the products (for all covered drugs of the manufacturer purchased under a State program under this title) of—

"(aa) the average manufacturer price for each such covered drug; and

"(bb) the number of units of the covered drug sold to any State program under this title during such period, to

"(II) the total number of units of all such covered drugs sold under a State program under this title in such period, except that the Secretary may exclude certain new drugs from the calculation of the weighted average if the inclusion of any such drug in such calculation has the effect of—

"(aa) reducing the rebate otherwise calculated pursuant to subparagraph (A)(ii); or

"(bb) increasing the rebate otherwise calculated pursuant to subparagraph (A)(ii) (in cases where such calculation under the conditions outlined in clause (ii).[34]

[33] So in original. Probably should be ".".
[34] So in original. Probably should be "(ii))".

"(ii)(I) The Secretary may exclude drugs approved by the Food and Drug Administration on or after October 1, 1990, from the calculation of weighted average manufacturer price if inclus [35] manufacturer demonstrates through a petition, in a form and manner prescribed by the Secretary, undue hardship on such manufacturer as a result of the inclusion of such drug in such calculation).[36]

"(II) The Secretary may promulgate guidelines to restrict the conditions under which the Secretary may consider such petitions.

"(C) For each of 8 calendar quarters beginning after December 31, 1991, the Secretary shall compare the aggregate amount of the rebates under subparagraph (A)(i) to the aggregate amount of rebates under subparagraph (A)(ii). Based on any such comparison, the Secretary may propose and utilize an alternative formula for the purpose of calculating an aggregate rebate.

"(3) REBATE FOR OTHER DRUGS.—The amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(A) the applicable percentage (as described in paragraph (4) [37] of the average manufacturer price for each dosage form and strength of such drugs (after deducting customary prompt payment discounts) for the quarter (or other period), and

"(B) the number of units of such form and dosage dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2).

"(4) For the purposes of paragraph (3), the applicable percentage is—

"(A) with respect to calendar quarters beginning after December 31, 1990, and ending before January 1, 1994, 10 percent; and

"(B) with respect to calendar quarters beginning on or after December 31, 1993, 11 percent.

"(d) LIMITATIONS ON COVERAGE OF DRUGS.—

"(1) PERMISSIBLE RESTRICTIONS.—(A) Except as provided in paragraph (6), a State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

"(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

"(i) the prescribed use is not for a medically accepted indication (as defined in (k)(6));

"(ii) the drug is contained in the list referred to in paragraph (2); or

"(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

"(A) Agents when used for anorexia or weight gain.

"(B) Agents when used to promote fertility.

[35] So in original. The "inclus" probably should be "the".
[36] So in original. Probably should be "calculation.".
[37] So in original. Probably should be "(4))".

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and identical, similar, or related drugs (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations ('DESI' drugs)).

"(J) Barbiturates.

"(K) Benzodiazepines.

"(3) UPDATE OF DRUG LISTINGS.—The Secretary shall (except with respect to new drugs approved by the FDA for the first 6 months following the date of approval of such drugs shall not be subject to being listed in paragraph (2) under the provisions of this paragraph), by regulation, periodically update the list of drugs described in paragraph (2) or classes of drugs, or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

"(4) INNOVATOR MULTIPLE-SOURCE DRUGS.—Innovator multiple-source drugs shall be treated under applicable State and Federal law and regulation.

"(5) PRIOR AUTHORIZATION PROGRAMS.—A State plan under this title may not require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) unless the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) TREATMENT OF NEW DRUGS.—A State may not exclude for coverage, subject to prior authorization, or otherwise restrict any new biological or drug approved by the Food and Drug Administration after the date of enactment of this section, for a period of 6 months after such approval.

"(7) OTHER PERMISSIBLE RESTRICTIONS.—A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, provided such limitations are necessary to discourage waste. Nothing in this section shall restrict the ability of a State to address individual instances of fraud or abuse in any manner authorized under the Social Security Act.

"(8) DELAYED EFFECTIVE DATE.—The provisions of paragraph (5) shall become effective with respect to drugs dispensed under this title on or after July 1, 1991.

"(e) DENIAL OF FEDERAL FINANCIAL PARTICIPATION IN CERTAIN CASES.—The Secretary shall provide that no payment shall be made to a State under section 1903(a) for an innovator multiple-source drug dispensed on or after July 1, 1991, if, under applicable State law, a less expensive noninnovator multiple source drug (other than the innovator multiple-source drug) could have been dispensed.

"(f) PHARMACY REIMBURSEMENT.—

"(1) NO REDUCTIONS IN REIMBURSEMENT LIMITS.—(A) During the period of time beginning on January 1, 1991, and ending on December 31, 1994, the Secretary may not modify by regulation the formula used to determine reimbursement limits described in the regulations under 42 CFR 447.331 through 42 CFR 447.334 (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990) to reduce such limits for covered outpatient drugs.

(B) [38] During the period of time described in subparagraph (A), any State that was in compliance with the regulations described in subparagraph (A) may not reduce the limits for covered outpatient drugs described in subparagraph (A) or dispensing fees for such drugs.

"(2) ESTABLISHMENT OF UPPER PAYMENT LIMITS.—HCFA shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

"(g) DRUG USE REVIEW.—

"(1) IN GENERAL.—

"(A) In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

"(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

"(i) compendia which shall consist of the following:

[38] So in original. Probably should be " "(B)".

"(I) American Hospital Formulary Service Drug Information;

"(II) United States Pharmacopeia-Drug Information; and

"(III) American Medical Association Drug Evaluations; and

"(ii) the peer-reviewed medical literature.

"(C) The Secretary, under the procedures established in section 1903, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

"(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1919, currently at section 483.60 of title 42, Code of Federal Regulations.

"(2) DESCRIPTION OF PROGRAM.—Each drug use review program shall meet the following requirements for covered outpatient drugs:

"(A) PROSPECTIVE DRUG REVIEW.—(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this title, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

"(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this title by pharmacists which includes at least the following:

"(I) The pharmacist must offer to discuss with each individual receiving benefits under this title or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

"(aa) The name and description of the medication.

"(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

"(cc) Special directions and precautions for preparation, administration and use by the patient.

"(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

"(ee) Techniques for self-monitoring drug therapy.

"(ff) Proper storage.

"(gg) Prescription refill information.

"(hh) Action to be taken in the event of a missed dose.

"(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this title:

"(aa) Name, address, telephone number, date of birth (or age) and gender.

"(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

"(cc) Pharmacist comments relevant to the individuals drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this title or caregiver of such individual refuses such consultation.

"(B) RETROSPECTIVE DRUG USE REVIEW.—The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

"(C) APPLICATION OF STANDARDS.—The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

"(D) EDUCATIONAL PROGRAM.—The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data

provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

"(3) STATE DRUG USE REVIEW BOARD.—

"(A) ESTABLISHMENT.—Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the 'DUR Board') either directly or through a contract with a private organization.

"(B) MEMBERSHIP.—The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

"(i) The clinically appropriate prescribing of covered outpatient drugs.

"(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

"(iii) Drug use review, evaluation, and intervention.

"(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * * licensed and actively practicing pharmacists.

"(C) ACTIVITIES.—The activities of the DUR Board shall include but not be limited to the following:

"(i) Retrospective DUR as defined in section (2)(B).

"(ii) Application of standards as defined in section (2)(C).

"(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

"(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

"(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

"(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

"(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention im-

proved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

"(D) ANNUAL REPORT.—Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

"(h) ELECTRONIC CLAIMS MANAGEMENT.—

"(1) IN GENERAL.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system, for the purpose of performing online, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

"(2) ENCOURAGEMENT.—In order to carry out paragraph (1)—

"(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1903(a)(3)(A)(i) (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

"(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

"(i) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than May 1 of each year the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives a report on the the operation of this section in the preceding fiscal year.

"(2) DETAILS.—Each report shall include information on—

"(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

"(B) the total value of rebates received and number of manufacturers providing such rebates;

"(C) how the size of such rebates compare with the size or rebates offered to other purchasers of covered outpatient drugs;

"(D) the effect of inflation on the value of rebates required under this section;

"(E) trends in prices paid under this title for covered outpatient drugs; and

"(F) Federal and State administrative costs associated with compliance with the provisions of this title.

"(j) EXEMPTION OF ORGANIZED HEALTH CARE SETTINGS.—(1) Covered outpatient drugs dispensed by * * * Health Maintenance Organizations, including those organizations that contract under section 1903(m), are not subject to the requirements of this section.

"(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

"(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c).

"(k) DEFINITIONS.—In this section—

"(1) AVERAGE MANUFACTURER PRICE.—The term 'average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a calendar quarter, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.

"(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in paragraph (3), the term 'covered outpatient drug' means—

"(A) of those drugs which are treated as prescribed drugs for purposes of section 1905(a)(12), a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

"(i) which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act;

"(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

"(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the

Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

"(B) a biological product, other than a vaccine which—

"(i) may only be dispensed upon prescription,

"(ii) is licensed under section 351 of the Public Health Service Act, and

"(iii) is produced at an establishment licensed under such section to produce such product; and

"(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

"(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this title as part of payment for the following and not as direct reimbursement for the drug):

"(A) Inpatient hospital services.

"(B) Hospice services.

"(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

"(D) Physicians'services.

"(E) Outpatient hospital services * * * * [39] emergency room visits.

"(F) Nursing facility sevices.

"(G) Other laboratory and x-ray services.

"(H) Renal dialysis.

Such term also does not include any such drug or product which is used for a medical indication which is not a medically accepted indication.

"(4) NONPRESCRIPTION DRUGS.—If a State plan for medical assistance under this title includes coverage of prescribed drugs as described in section 1905(a)(12) and permits coverage of drugs which may be sold without a prescription (commonly referred to as 'over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

"(5) MANUFACTURER.—The term 'manufacturer' means any entity which is engaged in—

"(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

"(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"(6) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, which appears in peer-reviewed medical lit-

[39] So in original. Probably should be "services emergency".

erature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

"(7) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a calendar quarter, a covered outpatient drug (not including any drug described in paragraph (5)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

"(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

"(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributers [40] operating under the new drug application.

"(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) drug products are pharmaceuutically [41] equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

"(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

[40] So in original. Probably should be "distributors".
[41] So in original. Probably should be "pharmaceutically".

"(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

"(8) STATE AGENCY.—The term 'State agency' means the agency designated under section 1902(a)(5) to administer or supervise the administration of the State plan for medical assistance.".

(b) FUNDING.—

(1) DRUG USE REVIEW PROGRAMS.—Section 1903(a)(3) (42 U.S.C. 1936b(a)(3)) is amended— 42 USC 1396b.

(A) by striking "plus" at the end of subparagraph (C) and inserting "and", and

(B) by adding at the end the following new subparagraph:

"(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(g); plus".

(2) TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS.—The per centum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent. 42 USC 1396b note.

(c) DEMONSTRATION PROJECTS.— 42 USC 1396r-8 note.

(1) PROSPECTIVE DRUG UTILIZATION REVIEW.—

(A) The Secretary of Health and Human Services shall provide, through competitive procurement by not later than January 1, 1992, for the establishment of at least 10 statewide demonstration projects to evaluate the efficiency and cost-effectiveness of prospective drug utilization review (as a component of on-line, real-time electronic point-of-sales claims management) in fulfilling patient counseling and in reducing costs for prescription drugs.

(B) Each of such projects shall establish a central electronic repository for capturing, storing, and updating prospective drug utilization review data and for providing access to such data by participating pharmacists (and other authorized participants).

(C) Under each project, the pharmacist or other authorized participant shall assess the active drug regimens of recipients in terms of duplicate drug therapy, therapeutic overlap, allergy and cross-sensitivity reactions, drug interactions, age precautions, drug regiment compliance, prescribing limits, and other appropriate elements.

(D) Not later than January 1, 1994, the Secretary shall submit to Congress a report on the demonstration projects conducted under this paragraph.

(2) DEMONSTRATION PROJECT ON COST-EFFECTIVENESS OF REIMBURSEMENT FOR PHARMACISTS' COGNITIVE SERVICES.—

(A) The Secretary of Health and Human Services shall conduct a demonstration project to evaluate the impact on

quality of care and cost-effectiveness of paying pharmacists under title XIX of the Social Security Act, whether or not a drug is dispensed, for drug use review services. For this purpose, the Secretary shall provide for no fewer than 5 demonstration sites in different States and the participation of a significant number of pharmacists.

(B) Not later than January 1, 1995, the Secretary shall submit a report to the Congress on the results of the demonstration project conducted under subparagraph (A).

42 USC 1396r-8 note.

(d) STUDIES.—

(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS.—

(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

(B) The study conducted under this subsection shall include an assessment of—

(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section,

(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

(iii) the efficiency of mechanisms used by these institutions for billing and receiving payment for covered outpatient drugs dispensed under this title.

(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

(2) REPORT ON DRUG PRICING.—By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

(3) STUDY ON PRIOR APPROVAL PROCEDURES.—

(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act, including—

(i) the appeals provisions under such programs; and

(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS.—

(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to pharmacists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A).

(5) STUDY OF PAYMENTS FOR VACCINES.—The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act.

(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE.—The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such study no later than 1 year after the date of enactment of this subsection.

SEC. 4402. REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

(a) IN GENERAL.—Title XIX (42 U.S.C. 1396 et seq.) is amended—

(1) in section 1902(a)(25) (42 U.S.C. 1396a(a)(25))—

(A) by striking "and" at the end of subparagraph (E),

(B) by adding "and" at the end of subparagraph (F), and

(C) by adding at the end the following new subparagraph:

"(G) that the State plan shall meet the requirements of section 1906 (relating to enrollment of individuals under group health plans in certain cases);"; and

(2) by inserting after section 1905 the following new section:

"ENROLLMENT OF INDIVIDUALS UNDER GROUP HEALTH PLANS

"SEC. 1906. (a) For purposes of section 1902(a)(25)(G) and subject to subsection (d), each State plan— 42 USC 1396e.

"(1) shall implement guidelines established by the Secretary, consistent with subsection (b), to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this title in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2));

"(2) shall require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this title and subject to subsection (b)(2), notwithstanding any other provision of this title, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

"(3) in the case of such enrollment (except as provided in subsection (c)(1)(B)), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916), and shall treat coverage under the group health plan as a third party liability (under section 1902(a)(25)).

"(b)(1) In establishing guidelines under subsection (a)(1), the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

"(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2), such failure shall not affect the child's eligibility for benefits under this title.

"(c)(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

"(B) If all members of a family are not eligible for medical assistance under this title and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

"(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

"(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

"(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1902(a)(25) provides that payment for such benefits shall first be made by such plan.

"(d)(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(2) This section, and section 1902(a)(25)(G), shall only apply to a State that is one of the 50 States or the District of Columbia.

"(e) In this section:

"(1) The term 'group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(2) The term 'cost-effective' means, as established by the Secretary, that the reduction in expenditures under this title with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.".

(b) TREATMENT OF ERRONEOUS EXCESS PAYMENTS FOR MEDICAL ASSISTANCE.—Section 1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv)) is amended by inserting before the period at the end the following: "or with respect to payments made in violation of section 1906".

(c) OPTIONAL MINIMUM 6-MONTH ELIGIBILITY.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

"(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

"(B) For purposes of subparagraph (A), the term 'minimum enrollment period' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (E)—

(A) by striking "and" at the end of subdivision (IX);

(B) by inserting "and" at the end of subdivision (X); and

(C) by adding at the end the following new subdivision:

"(XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1906 shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals;".

(2) Section 1905(a) (42 U.S.C. 1396d(a)) is amended by adding at the end the following: "The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of title XVIII for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom

there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof.".

(3) Section 1903(a)(1) (42 U.S.C. 1396b(a)(1)) is amended by striking "(including expenditures for" and all that follows through "or the cost thereof)".

42 USC 1396a note.

(e) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before 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 the enactment of this Act. For purposes of the previous sentence, 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.

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

SEC. 4501. PHASED-IN EXTENSION OF MEDICAID PAYMENTS FOR MEDICARE PREMIUMS FOR CERTAIN INDIVIDUALS WITH INCOME BELOW 120 PERCENT OF THE OFFICIAL POVERTY LINE.

(a) 1-YEAR ACCELERATION OF BUY-IN OF PREMIUMS AND COST SHARING FOR QUALIFIED MEDICARE BENEFICIARIES UP TO 100 PERCENT OF POVERTY LINE.—Section 1905(p)(2) (42 U.S.C. 1396d(p)(2)) is further amended—

(1) in subparagraph (B)—

(A) by adding "and" at the end of clause (ii);

(B) in clause (iii), by striking "95 percent, and" and inserting "100 percent."; and

(C) by striking clause (iv); and

(2) in subparagraph (C)—

(A) in clause (iii), by striking "90" and inserting "95";

(B) by adding "and" at the end of clause (iii);

(C) in clause (iv), by striking "95 percent, and" and inserting "100 percent."; and

(D) by striking clause (v).

42 USC 1396a.

(b) ENTITLEMENT.—Section 1902(a)(10)(E) (42 U.S.C. 1395b(a)(10)(E)(ii)) is amended—

(1) by striking ", and" at the end of clause (i) and inserting a semicolon;

(2) by adding "and" at the end of clause (ii); and

(3) by adding at the end the following new clause:

"(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved;".

(c) APPLICATION IN CERTAIN STATES AND TERRITORIES.—Section 1905(p)(4) (42 U.S.C. 1396d(p)(4)) is amended—

(1) in subparagraph (B), by inserting "or 1902(a)(10)(E)(iii)" after "subparagraph (B)", and

(2) by adding at the end the following:

"In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirement of section 1902(a)(10)(E) in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title."

(d) CONFORMING AMENDMENT.—Section 1843(h) (42 U.S.C. 1395v(h)) is amended by adding at the end the following new paragraph:

"(3) In this subsection, the term 'qualified medicare beneficiary' also includes an individual described in section 1902(a)(10)(E)(iii).".

(e) DELAY IN COUNTING SOCIAL SECURITY COLA INCREASES UNTIL NEW POVERTY GUIDELINES PUBLISHED.—

(1) IN GENERAL.—Section 1905(p) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(D)" after "supplementary social security income program", and

(B) by adding at the end of paragraph (2) the following new subparagraph:

"(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under title II for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such title which have occurred pursuant to section 215(i) for benefits payable for months beginning with December of the previous year.

"(ii) For purposes of clause (i), the term 'transition month' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.".

(2) CONFORMING AMENDMENTS.—Section 1902(m) (42 U.S.C. 1396a(m)) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(C)" after "supplemental security income program", and

(B) by adding at the end of paragraph (2) the following new subparagraph:

"(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1905(p).".

42 USC 1396a note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) shall apply to determinations of income for months beginning with January 1991.

PART 3—IMPROVEMENTS IN CHILD HEALTH

SEC. 4601. MEDICAID CHILD HEALTH PROVISIONS.

(a) PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 PERCENT OF POVERTY LEVEL.—

(1) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(i)—

(i) by striking "or" at the end of subclause (V),

(ii) by striking the semicolon at the end of subclause (VI) and inserting ", or", and

(iii) by adding at the end the following new subclause:

"(VII) who are described in subparagraph (D) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(C) for such a family;";

(B) in subsection (a)(10)(A)(ii)(IX), by striking "or clause (i)(VI)" and inserting ", clause (i)(VI), or clause (i)(VII)";

(C) in subsection (l)—

(i) in subparagraph (C) of paragraph (1) by inserting "children" after "(C)";

(ii) by striking subparagraph (D) of paragraph (1) and inserting the following:

"(D) children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age,";

(iii) by striking subparagraph (C) of paragraph (2) and inserting the following:

"(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.";

(iv) in paragraph (3) by inserting ", (a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI)";

(v) in paragraph (4)(A), by inserting "or subsection (a)(10)(A)(i)(VII)" after "(a)(10)(A)(i)(VI)"; and

(vi) in paragraph (4)(B), by striking "or (a)(10)(A)(i)(VI)" ", and inserting "(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)"; and

(D) in subsection (r)(2)(A), by inserting "(a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI),".

(2) CONFORMING AMENDMENT TO QUALIFIED CHILDREN.—Section 1905(n)(2) (42 U.S.C. 1396d(n)(2)) is amended by striking "age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)" and inserting "age of 19".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended—

(i) by striking "1902(a)(10)(A)(i)(IV)," and inserting "1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V),", and

(ii) by inserting "1902(a)(10)(A)(i)(VII)," after "1902(a)(10)(A)(i)(VI),".

(B) Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of such Act (42 U.S.C. 1396r-6), as amended by section 6411(i)(3) of the Omnibus Budget Reconciliation Act of 1989, are each amended by inserting "(i)(VII)," after "(i)(VI)".

(b) EFFECTIVE DATE.—(1) The amendments made by this subsection apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date. 42 USC 1396a note.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before 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 the enactment of this Act. For purposes of the previous sentence, 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.

SEC. 4602. MANDATORY USE OF OUTREACH LOCATIONS OTHER THAN WELFARE OFFICES.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2) of this title, is amended—

(1) by striking "and" at the end of paragraph (53),

(2) by striking the period at the end of paragraph (54) and inserting "; and", and

(3) by inserting after paragraph (54) the following new paragraph:

"(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)—

"(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B), and

"(B) using applications which are other than those used for applications for aid under such part.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calenar [42] quarters beginning on or after July 1, 1991, without 42 USC 1396a note.

[42] So in original. Probably should be "calendar".

regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4603. MANDATORY CONTINUATION OF BENEFITS THROUGHOUT PREGNANCY OR FIRST YEAR OF LIFE.

(a) IN GENERAL.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended—

(1) in the first sentence of paragraph (4), by inserting "(or would remain if pregnant)" after "remains"; and

(2) in paragraph (6)—

(A) by striking "At the option of a State, in" and inserting "In";

(B) by striking "the State plan may nonetheless treat the woman as being" and inserting "the woman shall be deemed to continue to be"; and

(C) by adding at the end the following new sentence: "The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.".

42 USC 1396a note.

(b) EFFECTIVE DATE.—

(1) INFANTS.—The amendment made by subsection (a)(1) shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN UNDER THE AGE OF 6 YEARS.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(s) In order to meet the requirements of subsection (a)(55), the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall—

"(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

"(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

"(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).".

(b) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2), is further amended—

(1) by striking "and" at the end of paragraph (53);

(2) by striking the period at the end of paragraph (54) and by inserting "; and"; and

(3) by inserting after paragraph (54) and before the end matter the following new paragraph:

"(55) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services.".

(c) PROHIBITION ON WAIVER.—Section 1915(b) (42 U.S.C. 1396n(b)) is amended in the matter preceding paragraph (1) by inserting "(other than subsection (s))" after "Section 1902".

(d) EFFECTIVE DATE.—(1) The amendments made by this subsection shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date. 42 USC 1396a note.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before 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 the enactment of this Act. For purposes of the previous sentence, 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.

SEC. 4605. PRESUMPTIVE ELIGIBILITY.

(a) EXTENSION OF PRESUMPTIVE ELIGIBILITY PERIOD.—Section 1920 (42 U.S.C. 1396r-1) is amended—

(1) in subsection (b)(1)(B)—

(A) by adding "or" at the end of clause (i),

(B) by striking clause (ii), and

(C) by amending clause (iii) to read as follows:

"(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and"; and

(2) in subsections (c)(2)(B) and (c)(3), by striking "within 14 calendar days after the date on which" and inserting "by not later than the last day of the month following the month during which".] [43]

(b) FLEXIBILITY IN APPLICATION.—Section 1920(c)(3) (42 U.S.C. 1396r-1(c)(3)) is amended by inserting before the period at the end the following: ", which application may be the application used for the receipt of medical assistance by individuals described in section 1902(l)(1)(A)".

(c) EFFECTIVE DATES.— 42 USC 1396r-1 note.

(1) The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to

[43] So in original. Probably should be "which".".

whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendment made by subsection (b) shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4606. ROLE IN PATERNITY DETERMINATIONS.

(a) IN GENERAL.—Section 1912(a)(1)(B) (42 U.S.C. 1396k(a)(1)(B)) is amended by inserting "the individual is described in section 1902(l)(1)(A) or" after "unless (in either case)".

42 USC 1396k note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

42 USC 1396b note.

SEC. 4607. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

PART 4—MISCELLANEOUS

Subpart A—Payments

SEC. 4701. STATE MEDICAID MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES.

(a) EXTENSION OF PROVISION ON VOLUNTARY CONTRIBUTIONS AND PROVIDER-SPECIFIC TAXES.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(b) STATE TAX CONTRIBUTIONS.—(1) Section 1902 (42 U.S.C. 1396a) as amended by section 4604, is further amended by adding at the end the following new subsection:

"(t) Except as provided in section 1903(i), nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services.".

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or"; and

(B) by adding at the end the following new paragraph:

"(10) with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facil-

ity, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [44] with respect to hospitals or facilities.".

(c) EFFECTIVE DATES.—The amendment made by subsection (b) shall take effect on January 1, 1991. 42 USC 1396b note.

SEC. 4702. DISPROPORTIONATE SHARE HOSPITALS: COUNTING OF INPATIENT DAYS.

(a) CLARIFICATION OF MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT CALCULATION.—Section 1923(b)(2) (42 U.S.C. 1396r-4(b)(2)) is amended by adding at the end the following new sentence: "In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1990. 42 USC 1396r-4 note.

SEC. 4703. DISPROPORTIONATE SHARE HOSPITALS: ALTERNATIVE STATE PAYMENT ADJUSTMENTS AND SYSTEMS.

(a) ALTERNATIVE STATE PAYMENT ADJUSTMENTS.—Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by adding "or" at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

"(A) applies equally to all hospitals of each type; and

"(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this title or to low-income patients.".

(b) CLARIFICATION OF SPECIAL RULE FOR STATE USING HEALTH INSURING ORGANIZATION.—Section 1923(e)(2) (42 U.S.C. 1396r-4(e)(2)) is amended by striking "during the 3-year period".

(c) CONFORMING AMENDMENT.—Section 1923(c)(2) (42 U.S.C. 1396r-4(c)(2)) is amended by inserting after "State" "or the hospital's low-income utilization rate (as defined in paragraph (b)(3))".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 412(a)(2) of the Omnibus Budget Reconciliation Act of 1987. 42 USC 1396r-4 note.

SEC. 4704. FEDERAILY [45] QUALIFIED HEALTH CENTERS.

(a) CLARIFICATION OF USE OF MEDICARE PAYMENT METHODOLOGY.—Section 1902(a)(13)(E) (42 U.S.C. 1396a(a)(13)(E)) is amended—

(1) by striking "may prescribe" the first place it appears and inserting "prescribes", and

(2) by striking "on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph" and inserting "on the same methodology used under section 1833(a)(3)".

[44] So in original. Probably should be "solely".
[45] So in original. Probably should be "FEDERALLY".

(b) MINIMUM PAYMENT RATES BY HEALTH MAINTENANCE ORGANIZATIONS.—(1) Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) is amended—

(A) by striking "and" at the end of clause (vii),

(B) by striking the period at the end of clause (viii) and inserting ", and", and

(C) by adding at the end the following new clause:

"(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1902(a)(13)(E), and (II) at the election of such center payments made by the entity to such a center for services described in 1905(a)(2)(C) are made at the rates of payment specified in section 1902(a)(13)(E).".

(2) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(A)) is amended by striking "(A)" and inserting "(A) except with respect to clause (ix) of subparagraph (A),".

(3) Section 1915(b) (42 U.S.C. 1396n(b)) is amended by inserting after "section 1902" "(other than sections 1902(a)(13)(E) and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C))".

(c) CLARIFICATION IN TREATMENT OF OUTPATIENTS.—Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)) is amended—

(1) in subparagraph (A), by striking "outpatient" and inserting "patient",

(2) in subparagraph (B), by striking "facility" and inserting "entity", and

(3) by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

"(II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;".

(d) TREATMENT OF INDIAN TRIBES.—The first sentence of section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended—

(1) by striking the period at the end and inserting a comma, and

(2) by adding, after and below clause (ii), the following:

"and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).".

(e) TECHNICAL CORRECTION.—Section 6402 of the Omnibus Budget Reconciliation Act of 1989 is amended—

42 USC 1396a, 1396d.

(1) by striking subsection (c), and

(2) by amending subsection (d) to read as follows:

42 USC 1396a note.

"(c) EFFECTIVE DATE.—The amendments made by this section (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.".

42 USC 1396a note.

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4705. HOSPICE PAYMENTS.

(a) IN GENERAL.—Section 1905(o)(3) (42 U.S.C. 1396d(o)(3)) is amended—

(1) by striking "a State which elects" and all that follows through "with respect to" the first place it appears,

(2) by striking "skilled nursing or intermediate care facility" in subparagraphs (A) and (C) and inserting "nursing facility or intermediate care facility for the mentally retarded";

(3) by striking "the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13)," and inserting "the additional amount described in section 1902(a)(13)(D)", and

(4) by striking the last sentence.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989. 42 USC 1396d note.

SEC. 4706. LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21. 42 USC 1396d note.

(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act, and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act relating to the failure of a psychiatric facility to comply with certification of need requirements—

(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act.

SEC. 4707. TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

SEC. 4708. BILLING FOR SERVICES OF SUBSTITUTE PHYSICIAN.

(a) UNDER MEDICAID.—Section 1902(a)(32) (42 U.S.C. 1396a(a)(32))—

(1) by striking "and" before "(B)",
(2) by inserting "and" at the end of subparagraph (B), and
(3) by adding at the end the following:

"(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services.".

42 USC 1396a note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

Subpart B—Eligibility and Coverage

SEC. 4711. HOME AND COMMUNITY-BASED CARE AS OPTIONAL SERVICE.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 6201, is further amended—

(1) by striking "and" at the end of paragraph (22);
(2) by redesignating paragraph (23) as paragraph (24); and
(3) by inserting after paragraph (22) the following new paragraph:

"(23) home and community care (to the extent allowed and as defined in section 1929) for functionally disabled elderly individuals; and".

(b) HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by section 4402 is further amended—

(1) by redesignating section 1929 as section 1930; and
(2) by inserting after section 1928 the following new section:

"HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS

42 USC 1396t.

"SEC. 1929. (a) HOME AND COMMUNITY CARE DEFINED.—In this title, the term 'home and community care' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c), to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d)):

"(1) Homemaker/home health aide services.
"(2) Chore services.
"(3) Personal care services.
"(4) Nursing care services provided by, or under the supervision of, a registered nurse.
"(5) Respite care.
"(6) Training for family members in managing the individual.
"(7) Adult day care.

"(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

"(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

"(b) FUNCTIONALLY DISABLED ELDERLY INDIVIDUAL DEFINED.—

"(1) IN GENERAL.—In this title, the term 'functionally disabled elderly individual' means an individual who—

"(A) is 65 years of age or older,

"(B) is determined to be a functionally disabled individual under subsection (c), and

"(C) subject to section 1902(f) (as applied consistent with section 1902(r)(2)), is receiving supplemental security income benefits under title XVI (or under a State plan approved under title XVI) or, at the option of the State, is described in section 1902(a)(10)(C).

"(2) TREATMENT OF CERTAIN INDIVIDUALS PREVIOUSLY COVERED UNDER A WAIVER.—(A) In the case of a State which—

"(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1915(c) or 1915(d) with respect to individuals 65 years of age or older, and

"(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this title, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

"(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1115 that provides under the State plan under this title for personal care services for functionally disabled individuals, the term 'functionally disabled elderly individual' may include, at the option of the State, an individual who—

"(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under title XVI);

"(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

"(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1902(a)(10)(A)(ii)(V).

"(3) USE OF PROJECTED INCOME.—In applying section 1903(f)(1) in determining the eligibility of an individual (described in section 1902(a)(10)(C)) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

"(c) DETERMINATIONS OF FUNCTIONAL DISABILITY.—

"(1) IN GENERAL.—In this section, an individual is 'functionally disabled' if the individual—

"(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

"(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

"(2) ASSESSMENTS OF FUNCTIONAL DISABILITY.—

"(A) REQUESTS FOR ASSESSMENTS.—If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

"(i) is used to determine whether or not the individual is functionally disabled,

"(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

"(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

"(B) SPECIFICATION OF ASSESSMENT INSTRUMENT.—The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

"(i) one of the instruments designated under subparagraph (C)(ii); or

"(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

"(C) SPECIFICATION OF ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(i) not later than July 1, 1991—

"(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

"(II) establish guidelines for use of the data set; and

"(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

"(D) PERIODIC REVIEW.—Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

"(E) CONDUCT OF ASSESSMENT BY INTERDISCIPLINARY TEAMS.—An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an

interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

"(i) with public organizations; or

"(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

"(F) CONTENTS OF ASSESSMENT.—The interdisciplinary team must—

"(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

"(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1).

"(G) APPEAL PROCEDURES.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

"(d) INDIVIDUAL COMMUNITY CARE PLAN (ICCP).—

"(1) INDIVIDUAL COMMUNITY CARE PLAN DEFINED.—In this section, the terms 'individual community care plan' and 'ICCP' mean, with respect to a functionally disabled elderly individual, a written plan which—

"(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2);

"(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

"(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

"(2) QUALIFIED COMMUNITY CARE CASE MANAGER DEFINED.—In this section, the term 'qualified community care case manager' means a nonprofit or public agency or organization which—

"(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

"(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

"(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

"(D) has procedures for assuring the quality of case management services that includes a peer review process;

"(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

"(F) meets such other standards, established by the Secretary, as to assure that—

"(i) such a manager is competent to perform case management functions;

"(ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

"(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

"(3) APPEALS PROCESS.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

"(e) CEILING ON PAYMENT AMOUNTS AND MAINTENANCE OF EFFORT.—

"(1) CEILING ON PAYMENT AMOUNTS.—Payments may not be made under section 1903(a) to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

"(A) the average number of individuals in the quarter receiving such care under this section;

"(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under title XVIII (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

"(C) the number of days in such quarter.

"(2) MAINTENANCE OF EFFORT.—

"(A) ANNUAL REPORTS.—As a condition for the receipt of payment under section 1903(a) with respect to medical assistance provided by a State for home and community

care (other than a waiver under section 1915(c) and other than home health care services described in section 1905(a)(7) and personal care services specified under regulations under section 1905(a)(23)), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

"(B) REDUCTION IN PAYMENT IF FAILURE TO MAINTAIN EFFORT.—If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1903(a) in an amount equal to the difference between the amounts so reported.

"(f) MINIMUM REQUIREMENTS FOR HOME AND COMMUNITY CARE.—

"(1) REQUIREMENTS.—Home and Community care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k). Such requirements shall include—

"(A) the requirement that individuals providing care are competent to provide such care; and

"(B) the rights specified in paragraph (2).

"(2) SPECIFIED RIGHTS.—The rights specified in this paragraph are as follows:

"(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

"(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

"(C) The right to confidentiality of personal and clinical records.

"(D) The right to privacy and to have one's property treated with respect.

"(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

"(F) The right to education or training for oneself and for members of one's family or household on the management of care.

"(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

"(H) The right to be fully informed orally and in writing of the individual's rights.

"(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

"(J) Any other rights established by the Secretary.

"(g) MINIMUM REQUIREMENTS FOR SMALL COMMUNITY CARE SETTINGS.—

"(1) SMALL COMMUNITY CARE SETTINGS DEFINED.—In this section, the term 'small community care setting' means—

"(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

"(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

"(2) MINIMUM REQUIREMENTS.—A small community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

"(D) meet any applicable State or local requirements regarding certification or licensure;

"(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

"(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

"(h) MINIMUM REQUIREMENTS FOR LARGE COMMUNITY CARE SETTINGS.—

"(1) LARGE COMMUNITY CARE SETTING DEFINED.—In this section, the term 'large community care setting' means—

"(A) a nonresidential setting in which more than 8 individuals are served; or

"(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

"(2) MINIMUM REQUIREMENTS.—A large community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

"(D) meet the requirements of paragraphs (2) and (3) of section 1919(d) (relating to administration and other mat-

ters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1919(d)(2) (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

"(3) DISCLOSURE OF OWNERSHIP AND CONTROL INTERESTS AND EXCLUSION OF REPEATED VIOLATORS.—A community care setting—

"(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1124(a)(3)) in the setting; and

"(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this title or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

"(i) SURVEY AND CERTIFICATION PROCESS.—

"(1) CERTIFICATIONS.—

"(A) RESPONSIBILITIES OF THE STATE.—Under each State plan under this title, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h). The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

"(B) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h).

"(C) FREQUENCY OF CERTIFICATIONS.—Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

"(2) REVIEWS OF PROVIDERS.—

"(A) IN GENERAL.—The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f).

"(B) SPECIAL REVIEWS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f), the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

"(3) SURVEYS OF COMMUNITY CARE SETTINGS.—

"(A) IN GENERAL.—The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to

be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(B) SURVEY PROTOCOL.—Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k).

"(C) PROHIBITION OF CONFLICT OF INTEREST IN SURVEY TEAM MEMBERSHIP.—A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) or who has a personal or familial financial interest in the setting being surveyed.

"(D) VALIDATION SURVEYS OF COMMUNITY CARE SETTINGS.—The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g), but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is binding and supersedes that of the State survey.

"(E) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h), the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING OF PROVIDERS AND SETTINGS.—Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h).

"(5) INVESTIGATION OF ALLEGATIONS OF INDIVIDUAL NEGLECT AND ABUSE AND MISAPPROPRIATION OF INDIVIDUAL PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown

source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

"(6) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

"(ii) copies of cost reports (if any) of such providers and settings filed under this title,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICES OF SUBSTANDARD CARE.—If a State finds that—

"(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this title, or

"(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

"(C) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

"(j) ENFORCEMENT PROCESS FOR PROVIDERS OF COMMUNITY CARE.—

"(1) STATE AUTHORITY.—

"(A) IN GENERAL.—If a State finds, on the basis of a review under subsection (i)(2) or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies

available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

"(B) CIVIL MONEY PENALTY.—

"(i) IN GENERAL.—Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A)) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(ii) DEADLINE AND GUIDANCE.—Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

"(2) SECRETARIAL AUTHORITY.—

"(A) FOR STATE PROVIDERS.—With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

"(B) OTHER PROVIDERS.—With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

"(C) CIVIL MONEY PENALTY.—If the Secretary finds on the basis of a review under subsection (i)(2) or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(k) SECRETARIAL RESPONSIBILITIES.—

"(1) PUBLICATION OF INTERIM REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

"(i) the requirements of subsection (c)(2) (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) (relating to qualifications for qualified case managers), of subsection (f) (relating to minimum requirements for home and community care), of subsection (g) (relating to minimum requirements for small community care settings), and of subsection (h) (relating to minimum requirements for large community care settings, [46] and

"(ii) survey protocols (for use under subsection (i)(3)(A)) which relate to such requirements.

"(B) MINIMUM PROTECTIONS.—Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

"(2) DEVELOPMENT OF FINAL REQUIREMENTS.—The Secretary shall develop, by not later than October 1, 1992—

"(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

"(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

"(3) NO DELEGATION TO STATES.—The Secretary's authority under this subsection shall not be delegated to States.

[46] So in original. Probably should be "settings),".

"(4) NO PREVENTION OF MORE STRINGENT REQUIREMENTS BY STATES.—Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

"(l) WAIVER OF STATEWIDENESS.—States may waive the requirement of section 1902(a)(1) (related to State wideness) [47] for a program of home and community care under this section.

"(m) LIMITATION ON AMOUNT OF EXPENDITURES AS MEDICAL ASSISTANCE.— .

"(1) LIMITATION ON AMOUNT.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

"(2) ASSURANCE OF ENTITLEMENT TO SERVICE.—A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) to individuals described in subsection (b) for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

"(3) LIMITATION ON ELIGIBILITY.—The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

"(4) ALLOCATION OF MEDICAL ASSISTANCE.—The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.".

(c) PAYMENT FOR HOME AND COMMUNITY CARE.—

(1) REASONABLE AND ADEQUATE PAYMENT RATES.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(13)—

(i) by striking "and" at the end of subparagraph (D),

(ii) by inserting "and" at the end of subparagraph (E), and

(iii) by adding at the end the following new subparagraph:

"(F) for payment for home and community care (as defined in section 1929(a) and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;"; and

[47] So in original. Probably should be "Statewideness)".

(B) in subsection (h), by adding before the period at the end the following: "or to limit the amount of payment that may be made under a plan under this title for home and community care".

(2) DENIAL OF PAYMENT FOR CIVIL MONEY PENALTIES, ETC.—Section 1903(i)(8) of such Act (42 U.S.C. 1396b(i)(8)) is amended by inserting "(A)" after "medical assistance" and by inserting before the semicolon at the end the following: "or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this title or title XI or for legal expenses in defense of an exclusion or civil money penalty under this title or title XI if there is no reasonable legal ground for the provider's case".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting "(22)".

(2) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking "through (20)" and inserting "through (21)".

(e) EFFECTIVE DATES.— 42 USC 1396a note.

(1) Except as provided in this subsection, the amendments made by this section shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) The amendments made by subsection (c)(1) shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1).

(B) The amendment made by subsection (c)(2) shall apply to civil money penalties imposed after the date of the enactment of this Act.

(f) WAIVER OF PAPERWORK REDUCTION, ETC.—Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this Act and implementing the amendments made by this Act. 44 USC 3501 note.

SEC. 4712. COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)) as amended by section 4711 is further amended—

(1) by striking "and" at the end of paragraph (23);

(2) by redesignating paragraph (24) as paragraph (25); and

(3) by inserting after paragraph (23) the following new paragraph:

"(24) community supported living arrangements services (to the extent allowed and as defined in section 1930).".

(b) COMMUNITY SUPPORTED LIVING ARRANGEMENTS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by sections 4402 and 4711 is further amended—

(1) by redesignating section 1930 as section 1931; and

(2) by inserting after section 1929 the following new section:

"COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES

"SEC. 1930. (a) COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.—In this title, the term 'community supported living 42 USC 1396u.

arrangements services' means one or more of the following services meeting the requirements of subsection (h) provided in a State eligible to provide services under this section (as defined in subsection (d)) to assist a developmentally disabled individual (as defined in subsection (b)) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

"(1) Personal assistance.

"(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

"(3) 24-hour emergency assistance (as defined by the Secretary).

"(4) Assistive technology.

"(5) Adaptive equipment.

"(6) Other services (as approved by the Secretary, except those services described in subsection (g)).

"(7) Support services necessary to aid an individual to participate in community activities.

"(b) DEVELOPMENTALLY DISABLED INDIVIDUAL DEFINED.—In this title the term, 'developmentally disabled individual' means an individual who as defined by the Secretary is described within the term 'mental retardation and related conditions' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

"(c) CRITERIA FOR SELECTION OF PARTICIPATING STATES.—The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

"(d) QUALITY ASSURANCE.—A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

"(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

"(2) the State will adopt standards for survey and certification that include—

"(A) minimum qualifications and training requirements for provider staff;

"(B) financial operating standards; and

"(C) a consumer grievance process;

"(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

"(4) the State will establish reporting procedures to make available information to the public;

"(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

"(6) the State will provide the services defined in subsection (a) in accordance with an individual support plan (as defined by the Secretary in regulations); and

"(7) the State plan amendment under this section shall be reviewed by the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the Protection and Advocacy System established under section 142 of such Act.".[48]

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

"(e) MAINTENANCE OF EFFORT.—States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

"(f) EXCLUDED SERVICES.—No Federal financial participation shall be allowed for the provision of the following services under this section:

"(1) Room and board.

"(2) Cost of prevocational, vocational and supported employment.

"(g) WAIVER OF REQUIREMENTS.—The Secretary may waive such provisions of this title as necessary to carry out the provisions of this section including the following requirements of this title—

"(1) comparability of amount, duration, and scope of services; and

"(2) statewideness.

"(h) MINIMUM PROTECTIONS.—

"(1) PUBLICATION OF INTERIM AND FINAL REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

"(B) MINIMUM PROTECTIONS.—Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d), that—

"(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

"(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child

[48] So in original. Probably should be "Act.".

or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

"(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

"(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

"(2) SPECIFIED REMEDIES.—If the Secretary finds that a provider has not met an applicable requirement under subsection (h), the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(i) TREATMENT OF FUNDS.—Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

"(j) LIMITATION ON AMOUNTS OF EXPENDITURES AS MEDICAL ASSISTANCE.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.".

42 USC 1396u note.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).

SEC. 4713. PROVIDING FEDERAL MEDICAL ASSISTANCE FOR PAYMENTS FOR PREMIUMS FOR "COBRA" CONTINUATION COVERAGE WHERE COST EFFECTIVE.

(a) OPTIONAL PAYMENT OF COBRA PREMIUMS FOR QUALIFIED COBRA CONTINUATION BENEFICIARIES.—Section 1902 (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)—

(A) by striking "and" at the end of subparagraph (D),

(B) by adding "and" at the end of subparagraph (E),

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2)) for qualified COBRA continuation beneficiaries described in section 1902(u)(1);", and

(D) in the matter following subparagraph (E), by striking "and" before "(X)" and by inserting before the semicolon at the end the following: ", and (XI) the medical assistance made available to an individual described in subsection (u)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2))"; and

(2) by adding after the subsections added by section 4604 and 4701(b) the following new subsection:

"(u)(1) Individuals described in this paragraph are individuals—

"(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

"(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

"(2) For purposes of subsection (a)(10)(F) and this subsection, the term 'COBRA premiums' means the applicable premium imposed with respect to COBRA continuation coverage.

"(3) In this subsection, the term 'COBRA continuation coverage' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.".

(b) CONFORMING AMENDMENT.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(1) by striking "or" at the end of clause (viii),

(2) by adding "or" at the end of clause (ix), and

(3) by inserting after clause (ix) the following new clause: "(x) individuals described in section 1902(u)(1),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1991. 42 USC 1396a note.

SEC. 4714. PROVISIONS RELATING TO SPOUSAL IMPOVERISHMENT.

42 USC 1396r-5.

(a) CLARIFICATION OF NON-APPLICATION OF STATE COMMUNITY PROPERTY LAWS.—Section 1924(b)(2) (42 U.S.C. 1396r-1(b)(2)) as amended by subsection (a), is further amended by striking ", after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance" and inserting "for purposes of the post-eligibility income determination described in subsection (d)".

(b) CLARIFICATION OF TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—Section 1924(f)(1) (42 U.S.C. 1396r-5(f)(1)) is amended by striking "section 1917" and inserting "section 1917(c)(1)".

42 USC 1396r-5.

(c) CLARIFICATION OF PERIOD OF CONTINUOUS ELIGIBILITY.—Section 1924(c)(1) (42 U.S.C. 1396r-1(c)(1)) is amended by striking "the beginning of a continuous period of institutionalization of the institutionalized spouse" each place it appears and inserting "the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse".

42 USC 1396r-5 note.

(d) EFFECTIVE DATE.—The amendments made this section shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

SEC. 4715. DISREGARDING GERMAN REPARATION PAYMENTS FROM POST-ELIGIBILITY TREATMENT OF INCOME UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1902(r)(1) (42 U.S.C. 1396a(r)(1)) is amended by inserting "there shall be disregarded reparation payments made by the Federal Republic of Germany and" after "under such a waiver".

42 USC 1396a note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act.

SEC. 4716. AMENDMENTS RELATING TO MEDICAID TRANSITION PROVISION.

42 USC 1396r-6.

(a) AMENDMENTS.—Subsection (f) of section 1925 (42 U.S.C. 1396s) is amended—

(1) in subsection (b)(2)(B)(i), by inserting at the end the following: "A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.";

(2) in subsection (b)(2)(B), by adding at the end the following new clause:

"(iii) CLARIFICATION ON FREQUENCY OF REPORTING.—A State may not require that a family receiving extended assistance under this subsection or subsection (a) report more frequently than as required under clause (i) or (ii).";

and

(3) in subsection (b)(3)(B), by adding at the end the following: "No such termination shall be effective earlier than 10 days after the date of mailing of such notice.".

42 USC 1396r-6 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the Family Support Act of 1988.

SEC. 4717. CLARIFYING EFFECT OF HOSPICE ELECTION.

Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended by inserting "and for which payment may otherwise be made under title XVIII" after "described in section 1812(d)(2)(A)".

SEC. 4718. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.

42 USC 1396b note.

(a) IN GENERAL.—For purposes of section 1903(f)(1)(B), for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining the "highest amount which would ordinarily be paid to a family of the same size" (under the State's plan approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

SEC. 4719. CODIFICATION OF COVERAGE OF REHABILITATION SERVICES.

(a) IN GENERAL.—Section 1905(a)(13) (42 U.S.C. 1396d(a)(13)) is amended by inserting before the semicolon at the end the following: ", including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4720. PERSONAL CARE SERVICES FOR MINNESOTA.

(a) CLARIFICATION OF COVERAGE.—In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) PERSONAL CARE SERVICES DEFINED.—For purposes of this section, the term "personal care services" means services—

42 USC 1396d note.

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location;

but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to—

(1) personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989; and

(2) such services furnished before October 1, 1994.

SEC. 4721. MEDICAID COVERAGE OF PERSONAL CARE SERVICES OUTSIDE THE HOME.

(a) IN GENERAL.—Section 1905(a)(7) (42 U.S.C. 1396d(a)(7)) is amended by striking "services" and inserting "services including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility".

42 USC 1396d note.

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective with respect to personal care services provided on or after October 1, 1994.

SEC. 4722. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY TREATMENT SERVICES.

Section 1905(a) of the Social Security Act is amended by adding at the end the following new sentence: "No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.".

SEC. 4723. MEDICAID SPENDDOWN OPTION.

(a) IN GENERAL.—Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)) is amended by—

(1) inserting "(A)" after "(2)"; and

(2) by adding before the period at the end the following: "or, (B) notwithstanding section 1916 at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) will be reduced by amounts paid to the State pursuant to this subparagraph."

(b) CONFORMING AMENDMENT.—Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting after "insurance premiums" ", payments made to the State under section 1903(f)(2)(B),".

SEC. 4724. OPTIONAL STATE MEDICAID DISABILITY DETERMINATIONS INDEPENDENT OF THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by this title, is further amended by adding at the end the following new subsection:

"(v)(1) A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blind-

ness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1614(a) of the Social Security Act.".

Subpart C—Health Maintenance Organizations

SEC. 4731. REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.

(a) PHYSICIAN PAYMENT PLAN.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) as amended by this title is further amended—

(1) by striking ", and" at the end of clause (viii) and inserting a semicolon;

(2) by striking the period at the end of clause (ix) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(x) any physician incentive plan that it operates meets the requirements described in section 1876(i)(8).".

(b) REPEAL OF PROHIBITION AGAINST PHYSICIAN INCENTIVE PAYMENTS.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is—

(1) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended by striking "or an entity with a contract under section 1903(m)".

(2) PENALTIES.—Section 1903(m)(5)(A) (42 U.S.C. 1396b(m)(5)(A)) is amended—

(A) by striking "or" at the end of clause (iii);

(B) by adding "or" at the end of clause (iv); and

(C) by adding at the end the following new clause:

"(v) fails to comply with the requirements of section 1876(i)(8),".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b)(2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) shall take effect on the date of the enactment of this Act. 42 USC 1396b note.

SEC. 4732. SPECIAL RULES.

(a) WAIVER OF 75 PERCENT RULE FOR PUBLIC ENTITIES.—Section 1903(m)(2)(D) (42 U.S.C. 1396b(m)(2)(D)) is amended by striking "(i) special circumstances warrant such modification or waiver, and (ii)".

(b) EXTENDING SPECIAL TREATMENT TO MEDICARE COMPETITIVE MEDICAL PLANS.—

(1) 6-MONTH MINIMUM ENROLLMENT PERIOD OPTION.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting "or with an eligible organization with a contract under section 1876" after "1903(m)(2)(A)".

(2) ENROLLMENT LOCK-IN.—Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)) is amended—

(A) by striking "(G) or" and inserting "(G),", and

(B) adding at the end the following: "or with an eligible organization with a contract under section 1876 which meets the requirement of subparagraph (A)(ii), or".

(c) AUTOMATIC 1-MONTH REENROLLMENT FOR SHORT PERIODS OF INELIGIBILITY.—Section 1903(m)(2) is amended by adding at the end the following new subparagraph:

"(H) In the case of an individual who—

"(i) in a month is eligible for benefits under this title and enrolled with a health maintenance organization with a contract under this paragraph,

"(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

"(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.".

42 USC 1396b.

(d) ELIMINATION OF PROVISIONAL QUALIFICATION FOR HMOs.—Section 1903(m) is amended—

(1) in paragraph (2)(A)(i), by striking "(or the State as authorized by paragraph (3))", and

(2) by striking paragraph (3).

42 USC 1396a note.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4733. EXTENSION AND EXPANSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

Section 507 of the Family Support Act of 1988 is amended—

(1) by striking "1991" and inserting "1996"; and

(2) by striking the period at the end and inserting the following: ", and shall amend such waiver to permit the State to expand such demonstration project to other counties if the amount of medical assistance provided under title XIX of such Act after such expansion will not exceed the amount of medical assistance provided under such title had the project not been expanded to other counties.".

SEC. 4734. TREATMENT OF CERTAIN COUNTY-OPERATED HEALTH INSURING ORGANIZATIONS.

42 USC 1396b note.

Section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in paragraph (2)(A), by inserting "and in paragraph (3)" after "subparagraph (B)", and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

"(B) A health insuring organization described in this subparagraph is one that—

"(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

"(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

"(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

"(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

"(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

"(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

"(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

"(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.".

Subpart D—Demonstration Projects and Home and Community-Based Waivers

SEC. 4741. HOME AND COMMUNITY-BASED WAIVERS.

(a) TREATMENT OF ROOM AND BOARD.—(1) Subsections (c)(1) and (d)(1) of section 1915 (42 U.S.C. 1396n) are each amended by adding at the end the following: "For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.".

(b) ADJUSTMENT TO 1915(d) CEILING TO TAKE INTO ACCOUNT THE ADDED COSTS OF OBRA 87.—Section 1915(d)(5)(B)(iv) (42 U.S.C. 1396n(d)(5)(B)(iv)) is amended by striking "this title" the first place it appears and inserting "this title whose provisions become effective on or after such date".

SEC. 4742. TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1915(b)(4) (42 U.S.C. 1396n(b)(4)) is amended by inserting before the period at the end the following: "and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1902(a)(37)(A)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act. 42 USC 1396n note.

(c) TREATMENT OF PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION IN A DECERTIFIED FACILITY.—

(1) IN GENERAL.—Section 1915(c)(7) (42 U.S.C. 1396n(c)(7)) is amended by adding at the end the following new subparagraph:

"(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.".

42 USC 1396n note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981, but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act is terminated on or after the date of the enactment of this Act.

(d) SCOPE OF RESPITE CARE.—

42 USC 1396n.

(1) IN GENERAL.—Section 1915(c)(4) is amended by adding at the end the following:

"Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.".

42 USC 1396n note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

42 USC 1396n note.

(e) PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT.—In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act.

SEC. 4744. PROVISIONS RELATING TO FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.

(a) EXPANSION OF WAIVERS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) in paragraph (1), by striking "10" and inserting "15"; and

(2) by adding at the end the following new paragraph:

"(3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.".

(b) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES.—(1) Section 1924(a) (42 U.S.C. 1396r-5(a)) is amended by adding at the end the following new paragraph:

"(5) APPLICATION TO INDIVIDUALS RECEIVING SERVICES FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS.—This section applies to individuals receiving institutional or noninstitutional services from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.".

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 4745. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

42 USC 1396a note.

(a) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act, for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(l) of such Act (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

(v) the project provides for coverage of benefits consistent with subsection (b); and

(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

(B) The Secretary may waive the requirements of clause (ii) of this paragraph with respect to those projects described in subparagraph (B) of paragraph (1).

(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

(5) WAIVER OF REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act) as may be required to provide for additional coverage of individuals under projects under this section.

(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act or the Federal medical assistance percentage specified in section 1905(b) of such Act.

(b) BENEFITS.—

(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act.

(2) LIMITS ON BENEFITS.—

(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

(c) PREMIUMS AND COST-SHARING.—

(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act for individuals entitled to benefits under part A of title IV of such Act.

(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

(e) LIMITS ON EXPENDITURES AND FUNDING.—

(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than $12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994.

(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(f) EVALUATION AND REPORT.—

(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

(A) access to, and costs of, health care,

(B) private health care insurance coverage, and

(C) premiums and cost-sharing.

(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Sec-

retary may determine appropriate not later than January 1, 1995.

(g) DEFINITIONS.—In this section:

(1) The term "income official poverty line" means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(2) The term "project" refers to a demonstration project under subsection (a).

SEC. 4746. MEDICAID RESPITE DEMONSTRATION PROJECT EXTENDED.

Section 9414 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by amending subsection (e) to read as follows:

"(e) DURATION.—The project under this section may continue until September 30, 1992."; and

(2) in subsection (d), by striking the last sentence and inserting in lieu thereof the following new sentence: "For the period beginning October 1, 1990, and ending September 30, 1992, Federal payments for the project shall not exceed amounts expended under the project in the preceding fiscal year.".

42 USC 1396a note.

SEC. 4747. DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS.

(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act, and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

(A) general and preventative [49] medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

(B) prescription drugs, including drugs for the purposes of preventative health care services;

(C) counseling and social services;

(D) substance abuse treatment services (including services for multiple substances abusers);

[49] So in original. Probably should be "preventive".

(E) home care services (including assistance in carrying out activities of daily living);
(F) case management;
(G) health education services;
(H) respite care for caregivers;
(I) dental services; and
(J) diagnostic and laboratory services [50]

(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act and shall terminate on the date that is 3 years after the date of commencement.

(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act.

(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.

[50] So in original. Probably should be "services.".

Subpart E—Miscellaneous

SEC. 4751. REQUIREMENTS FOR ADVANCED DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2), 4601(d), 4701(a), 4711(a), and 4722 of this title, is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (55),

(B) by striking the period at the end of paragraph (56) and inserting "; and", and

(C) by inserting after paragraph (56) the following new paragraphs:

"(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirements of subsection (w);

"(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w)."; and

(2) by adding at the end the following new subsection:

"(w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the provider's or organization's written policies respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

"(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.". [51]

"(4) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated. [52]

(b) CONFORMING AMENDMENTS.—

(1) Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)) is amended—

(A) by inserting "meets the requirement of section 1902(w)" after "which" the first place it appears, and

(B) by inserting "meets the requirement of section 1902(a) and" after "which" the second place it appears.

(2) Section 1919(c)(2) of such Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act. 42 USC 1396a note.

(d) PUBLIC EDUCATION CAMPAIGN.— 42 USC 1396a note.

(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section, shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State

[51] So in original. Probably should be "directive.".
[52] So in original. Probably should be "incapacitated.".".

agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, add a page to the medicare handbook with respect to the provisions of this section.

SEC. 4752. IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.

(a) USE OF UNIQUE PHYSICIAN IDENTIFIERS.—

(1) ESTABLISHMENT OF SYSTEM.—

(A) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by sections 4601(d), 4701(a), 4711(a), 4722(a), and 4751(a) is further amended by adding at the end the following new subsection:

"(x) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.".

42 USC 1396a note.

(B) DEADLINE AND CONSIDERATIONS.—The system established under the amendment made by subparagraph (A) may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) REQUIRING INCLUSION WITH CLAIMS.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title, is amended—

(A) by striking the period at the end of paragraph (11) and inserting "; or", and

(B) by inserting after paragraph (11) the following new paragraph:

"(12) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x), unless the claim for the services includes the unique physician identifier provided under such system.".

(b) MAINTENANCE OF ENCOUNTER DATA BY HEALTH MAINTENANCE ORGANIZATIONS.—

(1) IN GENERAL.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as amended by this title, is amended—

(A) by striking "and" at the end of clause (ix),

(B) by striking the period at the end of clause (x) and inserting "; and", and

(C) by adding at the end the following new clause:

"(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.".

42 USC 1396a note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act.

(c) MAINTENANCE OF LIST OF PHYSICIANS BY STATES.—

(1) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by this title, is further amended—

(A) by striking "and" at the end of paragraph (56),

(B) by striking the period at the end of paragraph (57) and inserting "; and", and

(C) by inserting after paragraph (57) the following new paragraph:

"(58) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)) of all physicians who are certified to participate under the State plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act. 42 USC 1396a note.

(d) FOREIGN MEDICAL GRADUATE CERTIFICATION.— 42 USC 1396a note.

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service [53] shall provide, in the identifier system established under section 1902(x) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act) shall be issued an identifier under such system unless the individual—

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

(C) has held a license from 1 or more States continuously since 1958.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

(e) MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title and subsection (a)(2) of this section, is further amended—

(1) by striking the period at the end of paragraph (13) and inserting "; or"; and

(2) by inserting after paragraph (13) the following new paragraph:

"(14) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to—

"(A) a child under 21 years of age, unless the physician—

"(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

[53] So in original. Probably should be "Services".

"(vi) has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age; or

"(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician—

"(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

"(vi) has been certified by the Secretary as qualified to provide physicians' services to pregnant women.".

(f) REPORTING OF MISCONDUCT OR SUBSTANDARD CARE.—

(1) IN GENERAL.—Section 1921(a) (42 U.S.C. 1396r-2(a)) is amended—

(A) in paragraph (1), in the matter before subparagraph (A), by inserting "(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)" after "health care practitioners"; and

(B) in paragraph (1), by adding at the end the following new subparagraph:

"(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.".

42 USC 1396r-2 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.

SEC. 4753. CLARIFICATION OF AUTHORITY OF INSPECTOR GENERAL.

Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended—

(1) by striking "(j)" and inserting "(j)(1)"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

SEC. 4754. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.

(a) IN GENERAL.—Section 1902(a)(41) (42 U.S.C. 1396a(a)(41)) is amended by inserting "and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board" after "shall promptly notify the Secretary".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sanctions effected more than 60 days after the date of the enactment of this Act. 42 USC 1396a note.

SEC. 4755. MISCELLANEOUS PROVISIONS.

(a) PSYCHIATRIC HOSPITALS.—

(1) CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES.—

(A) IN GENERAL.—Section 1905(h)(1)(A) (42 U.S.C. 1396d(h)(1)(A)), as amended by section 2340(b) of the Deficit Reduction Act of 1984, is amended by inserting "or in another inpatient setting that the Secretary has specified in regulations" after "1861(f)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984. 42 USC 1396d note.

(2) INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS.—Section 1902 (42 U.S.C. 1396a) as amended by this title is further amended by adding at the end the following new subsection:

"(y)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies—

"(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

"(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

"(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title—

"(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

"(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

"(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

"(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

"(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action

is not taken in accordance with the approved plan and timetable.".

(b) STATE UTILIZATION REVIEW SYSTEMS.—Section 9432 of the Omnibus Budget Reconciliation Act of 1986 is amended— 42 USC 1396a note.

(1) in subsection (a)—

(A) by inserting "(1)" after "IN GENERAL.—",

(B) by striking ", during the period" and all that follows through "Congress,", and

(C) by adding at the end the following new paragraph:

"(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program for ambulatory surgery, preadmission testing, or same-day surgery.";

(2) in subsection (b)(4), by inserting "and subsection (d)" after "In this subsection"; and

(3) by adding at the end the following new subsection:

"(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

"(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

"(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.".

(c) ADDITIONAL MISCELLANEOUS PROVISIONS.—

(1) Effective July 1, 1990— 42 USC 1396a.

(A) section 1902(a)(10)(C)(iv) of the Social Security Act is amended by striking "through (20)" and inserting "through (21)", and

(B) section 1902(j) of such Act is amended by striking "through (21)" and inserting "through (22)".

(2) Effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) is amended by adding at the end the following: "This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.".

(3) Section 505(b) (42 U.S.C. 705(b)) is amended in the matter preceding paragraph (1) by striking "requirement" and inserting "requirements".

PART 5—PROVISIONS RELATING TO NURSING HOME REFORM

SEC. 4801. TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

(a) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date. 42 USC 1396r note.

(2) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1919(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A nursing facility" and inserting "(i) Except as provided in clause (ii), a nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) [54] and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(3) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1919(b)(5)(C) (42 U.S.C. 1396r(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(4) RETRAINING OF NURSE AIDES.—Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(5) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1919(f)(2)(A)(iv) (42 U.S.C. 1396r(f)(2)(A)(iv)) is amended—

(A) in subclause (I), by striking "and" at the end;

(B) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(C) in subclause (II), by striking the period at the end and inserting ", and"; and

(D) by adding at the end the following new subclause:

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such

[54] So in original. Probably should be "basis)" ".

program on a prorata basis during the period in which the nurse aide is so employed.".

(6) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(A) IN GENERAL.—Section 1919(f)(2)(B)(iii)(I) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

"(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clauses (i), (iii), or (iv) of subsection (h)(2)(A), clauses (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or".

42 USC 1396r note.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(ii) was subject to a denial of payment under either such title;

(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(v) pursuant to State action, was closed or had its residents transferred.

(7) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1919(f)(2)(B) (42 U.S.C. 1396r(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

(8) EXTENSION OF ENHANCED MATCH RATE UNTIL OCTOBER 1, 1990.—Section 1903(a)(2)(B) (42 U.S.C. 1396b(a)(2)(B)) is amended by striking "July 1, 1990" and inserting "October 1, 1990".

42 USC 1396b note.

(9) EFFECTIVE DATE.—Except as provided in paragraph (6), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date. 42 USC 1396r note.

(2) CLARIFICATION WITH RESPECT TO ADMISSIONS AND READMISSION FROM A HOSPITAL.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(A) in subsection (b)(3)(F), by striking "A nursing facility" and by inserting "Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility"; and

(B) in subsection (e)(7)(A)—

(i) by redesignating the first 2 sentences as clause (i) with the following heading (and appropriate indentation):

"(i) IN GENERAL.—", and

(ii) by adding at the end the following:

"(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS.—The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

"(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES.—The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

"(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

"(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

"(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.".

(3) DENIAL OF PAYMENTS FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES.—Section 1919(e)(7) (42 U.S.C. 1395r(e)(7)) is amended— 42 USC 1396r.

(A) in subparagraph (D)—

(i) in the heading, by striking "WHERE FAILURE TO CONDUCT PREADMISSION SCREENING",

(ii) by designating the first sentence as clause (i) with the following heading (and appropriate indentation):

"(i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW.—", and

(iii) by adding at the end the following new clause:

"(ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES.—No payment may be made

under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility."; and

(B) in subparagraph (E), by striking "the requirement of this paragraph" and inserting "the requirements of subparagraphs (A) through (C) of this paragraph".

(4) NO DELEGATION OF AUTHORITY TO CONDUCT SCREENING AND REVIEWS.—Section 1919 is further amended—

(A) in subsection (b)(3)(F), by adding at the end the following: "A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility)."; and

(B) in subsection (e)(7)(B), by adding at the end the following new clause:

"(iv) PROHIBITION OF DELEGATION.—A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).".

(5) ANNUAL REPORTS.—

(A) STATE REPORTS.—Section 1919(e)(7)(C) (42 U.S.C. 1396r(e)(7)(C)) is amended by adding at the end the following new clause:

"(iv) ANNUAL REPORT.—Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).".

42 USC 1396r note.

(B) SECRETARIAL REPORT.—Section 4215 of the Omnibus Budget Reconciliation Act of 1987 is amended by adding at the end the following new sentence: "Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.".

(6) REVISION OF ALTERNATIVE DISPOSITION PLANS.—Section 1919(e)(7)(E) (42 U.S.C. 1396r(e)(7)(E)) is amended by adding at the end the following: "The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.".

(7) DEFINITION OF MENTALLY ILL.—Section 1919(e)(7)(G)(i) (42 U.S.C. 1396r(e)(7)(G)(i)) is amended—

(A) by striking "primary or secondary" and all that follows through "3rd edition)" and inserting "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)",

(B) by inserting before the period "or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness".

(8) SUBSTITUTION OF "SPECIALIZED SERVICES" FOR "ACTIVE TREATMENT".—Sections 1919(b)(3)(F) and 1919(e)(7) (42 U.S.C. 1396r(b)(3)(F), 1396r(e)(7)) are each amended by striking "active treatment" and "ACTIVE TREATMENT" each place either appears and inserting "specialized services" and "SPECIALIZED SERVICES", respectively.

(9) EFFECTIVE DATES.— 42 USC 1396r note.

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(c) ENFORCEMENT PROCESS.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date. 42 USC 1396r note.

(d) SUPERVISION OF HEALTH CARE OF RESIDENTS OF NURSING FACILITIES BY NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS ACTING IN COLLABORATION WITH PHYSICIANS.—

(1) IN GENERAL.—Section 1919(b)(6)(A) (42 U.S.C. 1396r(b)(6)(A)) is amended by inserting "(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)" after "physician".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date. 42 USC 1396r note.

(e) OTHER AMENDMENTS.—

(1) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—

(A) IN GENERAL.—Section 1902(a)(13)(A) (42 U.S.C. 1396a(a)(13)(A)) is amended by inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title)" after "take into account the costs".

(B) DETAILS IN PLAN AMENDMENT.—Section 4211(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by inserting after the first sentence the following: "Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.". 42 USC 1396a note.

(2) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1919(b)(1)(B) (42 U.S.C. 1396r(b)(1)(B)) is amended by adding at the end the following

new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(3) PERIOD FOR RESIDENT ASSESSMENT.—Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not later than 14 days".

(4) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1919(b)(4)(A) (42 U.S.C. 1396r(b)(4)(A)) is amended—

(A) by striking "and" at the end of clause (v),

(B) by striking the period at the end of clause (vi) and inserting "; and", and

(C) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(5) CLARIFICATION OF EXTENT OF STATE WAIVER AUTHORITY; NOTIFICATION OF WAIVERS.—Section 1919(b)(4)(C)(ii) (42 U.S.C. 1396r(b)(4)(C)(ii)) is amended—

(A) by striking "A State" and all that follows through "a facility if" and inserting "To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if";

(B) by striking "and" at the end of subclause (II);

(C) by striking the period at the end of subclause (III) and inserting a comma; and

(D) by adding at the end the following new subclauses:

"(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(6) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1919(b)(5)(F)(i) (42 U.S.C. 1396r(b)(5)(F)(i)) is amended by striking "(G))," and inserting "(G)) or a registered dietician,".

(7) CHARGES APPLICABLE IN CASES OF CERTAIN MEDICAID-ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—Section 1919(c) (42 U.S.C. 1396r(c)) is amended—

(i) by redesignating paragraph (7) as paragraph (8); and

(ii) by inserting after paragraph (6) the following new paragraph:

"(7) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS.—

"(A) IN GENERAL.—A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan

under this title, that exceed the payment amounts established by the State for such services under this title.

"(B) CERTAIN MEDICAID INDIVIDUALS DEFINED.—In subparagraph (A), the term 'certain medicaid-eligible individual' means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated. 42 USC 1396r note.

(8) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS TO MOVE THE RESIDENT TO A MEDICARE-QUALIFIED PORTION.—Section 1919(c)(1)(A) (42 U.S.C. 1396r(c)(1)(A)) is amended—

(A) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.".

(9) RESIDENT ACCESS TO CLINICAL RECORDS.—Section section [55] 1919(c)(1)(A)(iv) (42 U.S.C. 1396r(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(10) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1919(c)(1)(B)(ii) (42 U.S.C. 1396r(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under subsection (e)(6)" after "in such rights)".

(11) REMOVAL OF DUPLICATIVE REQUIREMENT FOR QUALIFICATIONS OF NURSING HOME ADMINISTRATORS.—Effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1919(f)(4) of the Social Security Act—

(A) paragraph (29) of section 1902(a) of such Act (42 U.S.C. 1396a(a)) is repealed; and

(B) section 1908 of such Act (42 U.S.C. 1396g) is repealed.

(12) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1919(e)(2) (42 U.S.C. 1396r(e)(2)) is amended—

(A) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsec-

[55] So in original. Probably should be "Section 1919(c)(1)(A)(iv)".

tion (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

(B) by adding at the end the following new subparagraph:

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(13) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1919(g)(1)(C) (42 U.S.C. 1396r(g)(1)(C)) is amended by adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(14) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1919(g)(5)(A)(i) (42 U.S.C. 1396r(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(15) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect".

(16) DENIAL OF PAYMENT OF LEGAL FEES FOR FRIVOLOUS LITIGATION.—

(A) IN GENERAL.—Section 1903(i) (42 U.S.C. 1396b(i)), [[as amended by section X???(a)(1)(B) of this Act]], is amended—

(i) by striking "or" at the end of paragraph (9);

(ii) by striking the period at the end of paragraph (10) and inserting "; or"; and

(iii) by inserting after paragraph (10) the following new paragraph:

"(11) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action."

42 USC 1396b note.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply with respect to actions initiated on or after the date of the enactment of this Act.

42 USC 1396r note.

(17) PROVISIONS RELATING TO STAFFING REQUIREMENTS.—

(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title

XVIII of the Social Security Act and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act, and shall include in such study recommendations regarding appropriate minimum ratios.

(18) STATE REQUIREMENTS RELATING TO PROGRAMS.—Amend 1919(e)(1)(A) to strike "under clause (i) or (ii) of subsection (f)(2)(A) and insert "under subsection (f)(2)". 42 USC 1396r.

(19) EFFECTIVE DATES.—Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987. 42 USC 1396a note.

TITLE V—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Human Resource and Family Policy Amendments

SEC. 5001. TABLE OF CONTENTS.

SEC. 502. AMENDMENT OF SOCIAL SECURITY ACT.

Except as otherwise expressly provided, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

CHAPTER 1—CHILD SUPPORT ENFORCEMENT

SEC. 5011. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES.

(a) AUTHORITY OF STATES TO REQUEST WITHHOLDING OF FEDERAL TAX REFUNDS FROM PERSONS OWING PAST DUE CHILD SUPPORT.—Section 464(a)(2)(B) (42 U.S.C. 664(a)(2)(B)) is amended by striking ", and before January 1, 1991".

(b) WITHHOLDING OF FEDERAL TAX REFUNDS AND COLLECTION OF PAST DUE CHILD SUPPORT ON BEHALF OF DISABLED CHILD OF ANY AGE, AND OF SPOUSAL SUPPORT INCLUDED IN ANY CHILD SUPPORT ORDER.—Section 464(c) (42 U.S.C. 664(c)) is amended—

(1) in paragraph (2), by striking "minor child." and inserting "qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)."; and

(2) by adding at the end the following:

"(3) For purposes of paragraph (2), the term 'qualified child' means a child—

"(A) who is a minor; or

"(B)(i) who, while a minor, was determined to be disabled under title II or XVI; and

"(ii) for whom an order of support is in force.".

42 USC 664 note.

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on January 1, 1991.

SEC. 5012. EXTENSION OF COMMISSION ON INTERSTATE CHILD SUPPORT.

(a) REAUTHORIZATION.—Section 126 of the Family Support Act of 1988 (42 U.S.C. 666 note; Public Law 100-485) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by striking "1990" and inserting "1991"; and

(B) in paragraph (2), by striking "1991" and inserting "1992";

(2) in subsection (e), by adding at the end the following:

"(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

"(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code."; and

(3) in subsection (f)(1), by striking "1991" and inserting "1992".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act. 42 USC 666 note.

SEC. 5013. CHILD SUPPORT ENFORCEMENT WAIVER.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of Texas waiving (with respect to cases where a court has issued an order for child support) the following requirements under the State plan for child and spousal support that are described in subparagraphs (A) and (B) of section 454(6) of the Social Security Act, with respect to a project, based in the county of Bexar, of delinquency monitoring for child support enforcement:

(1) The submission of a written application by an individual requesting child support collection services.

(2) The payment of an application fee with respect to an application for such services.

(b) CONTENTS OF WAIVER AGREEMENT.—In the agreement between the Secretary and the State of Texas described in subsection (a), the waiver granted under such agreement shall provide the following:

(1) The waiver shall apply only with respect to the provision of child support collection services.

(2) Before the provision of any child support collection services, the organizational unit designated under section 454(3) of the Social Security Act (in this section referred to as the "State

agency") shall provide written notification to each custodial parent of the right of such parent to refuse such services.

(3) The State shall ensure that, to the extent possible, each parent of the child on behalf of whom such services are provided (regardless of whether such parent is a custodial parent) is to receive written notice at the time such services are provided, explaining—

(A) the legal rights of parents with respect to the child support collection services provided; and

(B) the responsibilities of the State agency in providing such child support collection services (including the monitoring of delinquent child support payments).

(4) A case record shall be deemed to have been established by the State agency upon notification of a custodial parent of the option to receive the child support enforcement services described in this subsection.

(5) Any period of enforcement by the State agency under this section with respect to the collection of delinquent child support payments shall be deemed to begin on the first day of any such delinquency.

(d) STUDY AND REPORT.—

(1) STUDY REQUIRED.—As a condition precedent to granting the waiver described in subsection (a), the State agency shall agree to conduct a study of the cost-effectiveness to the Federal Government and to the State of Texas of the monitoring of delinquent child support payments under the State plan under section 454 of the Social Security Act.

(2) CONDUCT OF STUDY.—

(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in accordance with the criteria established by the Secretary in accordance with subparagraph (B).

(B) CRITERIA.—Not later than February 1, 1991, the Secretary shall establish the criteria required by subparagraph (A), in consultation with—

(i) 1 or more representatives of organizations representing child support administrators;

(ii) 1 or more representatives of the General Accounting Office;

(iii) 1 or more representatives of the State of Texas; and

(iv) such other individuals or organizations with experience in the evaluation of child support programs, as the Secretary may designate.

(3) REPORT.—Not later than 3 months after the expiration of the waiver described in subsection (a), the State agency shall submit to the Secretary and to the Congress a report that includes the findings of the study required by this subsection.

(e) DURATION OF WAIVER.—The waiver described in subsection (a) shall be effective for not more than 2 years.

(f) MATCHING PAYMENTS.—

(1) GENERAL EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out child support enforcement programs with respect to which the waiver described in subsection (a) applies, the Secretary shall pay the State an amount equal to the lesser of—

(A) 66 percent of such expenditures; or
(B) $500,000.

(2) STUDY EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out the study required by subsection (d), the Secretary shall pay the State an amount equal to 66 percent of such expenditures.

CHAPTER 2—UNEMPLOYMENT COMPENSATION

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.—Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as—

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) USE OF TRANSFERRED AMOUNTS.—Paragraph (2) of section 903(c) (42 U.S.C. 1103(c)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act. 42 USC 1103 note.

CHAPTER 3—SUPPLEMENTAL SECURITY INCOME

SEC. 5031. EXCLUSION FROM INCOME AND RESOURCES OF VICTIMS' COMPENSATION PAYMENTS.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting "; and"; and

(3) by adding at the end the following:

"(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.".

(c) VICTIMS COMPENSATION AWARD NOT REQUIRED TO BE ACCEPTED AS CONDITION OF RECEIVING BENEFITS.—Section 1631(a) (42 U.S.C. 1383(a)) is amended by adding at the end the following:

"(9) Benefits under this title shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.".

42 USC 1382a note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5032. ATTAINMENT OF AGE 65 NOT TO SERVE AS BASIS FOR TERMINATION OF ELIGIBILITY UNDER SECTION 1619(b).

42 USC 1382h.

(a) IN GENERAL.—Section 1619(b)(1) (42 U.S.C. 1392h(b)(1)) is amended by striking "under age 65".

42 USC 1382h note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5033. EXCLUSION FROM INCOME OF IMPAIRMENT-RELATED WORK EXPENSES.

(a) IN GENERAL.—Section 1612(b)(4)(B)(ii) (42 U.S.C. 1382a(b)(4)(B)(ii)) is amended by striking "(for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)".

42 USC 1382a note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act.

SEC. 5034. TREATMENT OF ROYALTIES AND HONORARIA AS EARNED INCOME.

(a) IN GENERAL.—Section 1612(a) (42 U.S.C. 1382a(a)) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (C); and

(B) by adding at the end the following:

"(E) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and"; and

(2) in paragraph (2)(F), by inserting "not described in paragraph (1)(E)" before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted. 42 USC 1382a note.

SEC. 5035. CERTAIN STATE RELOCATION ASSISTANCE EXCLUDED FROM SSI INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)), as amended by section 5031(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting a semicolon; and

(3) by inserting after paragraph (17) the following:

"(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)), as amended by section 5031(b) of this Act, is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by inserting after paragraph (9) the following:

"(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for calendar months beginning in the 3-year period that begins on the first day of the 6th calendar month following the month in which this Act is enacted. 42 USC 1382a note.

SEC. 5036. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIAN OR OTHER QUALIFIED SPECIALIST.

(a) IN GENERAL.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(H) In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years and to whom section 221(h) does not apply, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other

individual who specializes in a field of medicine appropriate to the disability of the child (as determined by the Secretary) evaluates the case of such child.".

42 USC 1382c note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made 6 or more months after the date of the enactment of this Act.

SEC. 5037. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES FURNISHED DURING CERTAIN MONTHS OF NONPAYMENT OF SSI BENEFITS.

(a) IN GENERAL.—Section 1615 (42 U.S.C. 1382d) is amended by adding at the end the following:

"(e) The Secretary may reimburse the State agency described in subsection (d) for the costs described therein incurred in the provision of rehabilitation services—

"(1) for any month for which an individual received—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66; and

"(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66.".

42 USC 1382d note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to claims for reimbursement pending on or after such date.

SEC. 5038. EXTENSION OF PERIOD OF PRESUMPTIVE ELIGIBILITY FOR BENEFITS.

(a) IN GENERAL.—Section 1631(a)(4)(B) (42 U.S.C. 1383(a)(4)(B)) is amended by striking "3" and inserting "6".

42 USC 1383 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5039. CONTINUING DISABILITY OR BLINDNESS REVIEWS NOT REQUIRED MORE THAN ONCE ANNUALLY.

(a) IN GENERAL [56].—Section 1619 (42 U.S.C. 1382h) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) Subsection (a)(2) and section 1631(j)(2)(A) shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.".

(b) CONFORMING AMENDMENT.—Section 1631(j)(2)(A) (42 U.S.C. 1383(j)(2)(A)) is amended by inserting "(other than subsection (c) thereof)" after "1619" the 1st place such term appears.

42 USC 1382h note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

[56] So in original. Probably should be "GENERAL.—".

SEC. 5040. CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS.

Section 1631 (42 U.S.C. 1383) is amended—

(1) in subsection (m), by striking the second sentence; and

(2) by adding at the end the following:

"CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS

"(n) The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subsection shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).".

SEC. 5041. NOTIFICATION OF CERTAIN INDIVIDUALS ELIGIBLE TO RECEIVE RETROACTIVE BENEFITS.

In notifying individuals of their eligibility to receive retroactive supplemental security income benefits as a result of Sullivan v. Zebley, 110 S. Ct. 2658 (1990), the Secretary shall include written notice, in language that is easily understandable, explaining—

(1) the 6-month limitation on the exclusion from resources under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7));

(2) the potential effects under title XVI of the Social Security Act, attributable to the receipt of such payment, including—

(A) potential discontinuation of eligibility; and

(B) potential reductions in the amount of benefits;

(3) the possibility of establishing a trust account that would not be considered as income or resources for the purposes of such title if the trust met certain conditions; and

(4) that legal assistance in establishing such a trust may be available through legal referral services offered by a State or local bar association, or through the Legal Services Corporation.

CHAPTER 4—AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 5051. OPTIONAL MONTHLY REPORTING AND RETROSPECTIVE BUDGETING.

(a) OPTIONAL MONTHLY REPORTING.—Section 402(a)(14) (42 U.S.C. 602(a)(14)) is amended—

(1) by striking "with respect to" and all that follows through "(A) provide" and insert "provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A)";

(2) by striking "(with the prior approval of the Secretary in recent work history and earned income cases)"; and

(3) by striking "upon a determination" and all that follows through "paragraph".

(b) OPTIONAL RETROSPECTIVE BUDGETING.—Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended by striking all that precedes subparagraph (A) and inserting the following:

"(13) at the option of the State, but only with respect to any one or more categories of families required to report monthly to the State agency pursuant to paragraph (14), provide that—".

42 USC 602 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to reports pertaining to, or aid payable for, months beginning in or after October 1990.

SEC. 5052. CHILDREN RECEIVING FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS NOT TREATED AS MEMBER OF FAMILY UNIT FOR PURPOSES OF DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, AFDC BENEFIT.

(a) IN GENERAL.—Part A of title IV (42 U.S.C. 601 et seq.) is amended by inserting after section 408 the following:

"EXCLUSION FROM AFDC UNIT OF CHILD FOR WHOM FEDERAL, STATE, OR LOCAL FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS ARE MADE

42 USC 609.

"SEC. 409. (a) Notwithstanding any other provision of this title (other than subsection (b))—

"(1) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part; and

"(2) the income and resources of such child shall be excluded from the income and resources of a family under this part.

"(b) Subsection (a) shall not apply in the case of a child with respect to whom adoption assistance payments are made under part E or under State or local law, if application of such subsection would reduce the benefits under this part of the family of which the child would otherwise be regarded as a member.".

(b) CONFORMING REPEAL.—Section 478 (42 U.S.C. 678) is hereby repealed.

42 USC 609 note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and the repeal made by subsection (b) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5053. ELIMINATION OF TERM "LEGAL GUARDIAN".

(a) IN GENERAL.—Section 402(a)(39) (42 U.S.C. 602(a)(39)) is amended—

(1) by striking "or legal guardian"; and

(2) by striking "or legal guardians".

42 USC 602 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5054. REPORTING OF CHILD ABUSE AND NEGLECT.

(a) CONCERNING AFDC APPLICANTS AND RECIPIENTS.—

(1) IN GENERAL.—Section 402(a)(16) (42 U.S.C. 602(a)(16)) is amended to read as follows:

"(16) provide that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 402(a)(9) (42 U.S.C. 602(a)(9)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(b) CONCERNING RECIPIENTS OF FOSTER CARE OR ADOPTION ASSISTANCE.—

(1) IN GENERAL.—Section 471(a)(9) (42 U.S.C. 671(a)(9)) is amended to read as follows:

"(9) provides that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 471(a)(8) (42 U.S.C. 671(a)(8)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted. 42 USC 602 note.

SEC. 5055. DISCLOSURE OF INFORMATION ABOUT AFDC APPLICANTS AND RECIPIENTS AUTHORIZED FOR PURPOSES DIRECTLY CONNECTED TO STATE FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 402(a)(9)(A) (42 U.S.C. 602(a)(9)(A)) is amended by striking "or D" and inserting ", D, or E".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. 42 USC 602 note.

SEC. 5056. REPATRIATION.

(a) IN GENERAL.—Section 1113 (42 U.S.C. 1313) is amended—

(1) in subsection (d), by striking "on or after October 1, 1989" and inserting "after September 30, 1991"; and

(2) by adding at the end the following:

"(e)(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

"(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.".

42 USC 1313 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective for fiscal years beginning after September 30, 1989.

SEC. 5057. TECHNICAL AMENDMENT TO NATIONAL COMMISSION ON CHILDREN.

Section 1139(d) (42 U.S.C. 1320b-9(d)) is amended in the matter preceding paragraph (1), by striking "an interim report no later than March 31, 1991, and a final report no later than September 30, 1990" and inserting "an interim report no later than September 30, 1990, and a final report no later than March 31, 1991".

SEC. 5058. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF PROPOSED REGULATIONS ON EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.

Section 8005 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 606 note) is amended in each of subsections (a)(2) and (c) by striking "1990" and inserting "1991".

SEC. 5059. AMENDMENTS TO MINNESOTA FAMILY INVESTMENT PLAN DEMONSTRATION.

Section 8015 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 602 note) is amended—

(1) in subsection (a), by striking "part A" and inserting "parts A and F";

(2) in subsection (b)(3), by striking "(e)" and inserting "(d)";

(3) in subsection (b)(6), by inserting "or that is assigned to and found eligible for the project" after "in the project";

(4) in subsection (b)(8)(B)(ii), by inserting "(except that the age of the youngest child may be age 1 under the project even if the State plan specifies age 3)" after "such compliance";

(5) in subsection (b)(8)(B)(ii)(I), by inserting "and" after the semicolon;

(6) in subsection (b)(8)(B)(ii), by striking "; and" after "age of 1 year" and all that follows through the end of subclause (III) and inserting "(except that, in a 2-parent family, this clause applies only to 1 parent).";

(7) by amending subsection (b)(9) to read as follows:

"(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.";

(8) in subsection (b)(10)(A)—

(A) by inserting ", except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," after "ensure that"; and

(B) by striking "cash";

(9) in subsection (b), by adding at the end the following:

"(12) LIABILITY FOR COSTS.—For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been

liable for had the project not been implemented, except for costs for evaluating the project.";

(10) in subsection (c)(1)(B), by striking "50" and inserting "25";

(11) in subsection (c)(2), by striking "part A" and inserting "parts A and F";

(12) in subsection (d)(1)(B)(ii)—

(A) by inserting "except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," before "permit"; and

(B) by striking "cash";

(13) in subsection (d)(1)(B)(iii), by striking "section 402(a)(19)(C) of such Act" and inserting "subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan)"; and

(14) by adding at the end the following:

"(i) CONSTRUCTION.—For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act, the Food Stamp Act of 1977, or this section—

"(1) families participating in the project shall be considered to be recipients of aid under such part; and

"(2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.".

SEC. 5060. GOOD CAUSE EXCEPTION TO REQUIRED COOPERATION FOR TRANSITIONAL CHILD CARE BENEFITS.

(a) IN GENERAL.—Section 402(g)(1)(A)(vi)(II) (42 U.S.C. 602(g)(1)(A)(vi)(II)) is amended to read as follows:

"(II) refused to cooperate with the State in establishing and enforcing his or her child support obligations, without good cause as determined by the State agency in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child for whom child care is to be provided.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. 42 USC 602 note.

SEC. 5061. TECHNICAL CORRECTIONS REGARDING PENALTY FOR FAILURE TO PARTICIPATE IN JOBS PROGRAM.

(a) IN GENERAL.—Section 407(b)(1)(B) (42 U.S.C. 607(b)(1)(B))) [57] is amended—

(1) in clause (iii)—

(A) by striking "—" and all that follows through "(II)"; and

(B) by striking "and " at the end;

(2) in clause (iv), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(v) that, if and for so long as the child's parent described in subparagraph (A)(i), unless meeting a condition of section 402(a)(19)(C), is, without good cause, not participating (or available for participation) in a program under part F, or if exempt under such section by reason of clause (vii) thereof or because there has not been established or provided under part F a program in which such parent can effectively participate, is not registered with the public employment

[57] So in original. Probably should be "607(b)(1)(B))".

offices in the State, the needs of such parent shall not be taken into account in determining the need of such parent's family under section 402(a)(7), and the needs of such parent's spouse shall not be so taken into account unless such spouse is participating in such a program, or if not participating solely by reason of section 402(a)(19)(C)(vii) or because there has not been established or provided under part F a program in which such spouse can effectively participate, is registered with the public employment offices of the State; and if neither parents' needs are so taken into account, the payment provisions of section 402(a)(19)(G)(i)(I) shall apply.".

42 USC 607 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

SEC. 5062. TECHNICAL CORRECTIONS REGARDING AFDC-UP ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Section 407(d)(1) (42 U.S.C. 607(d)(1)) is amended—

(1) by striking "a calendar quarter (A)" and inserting "(A) a calendar quarter";

(2) by striking "or" at the end of subparagraph (A); and

(3) by inserting ", and (C) a calendar quarter ending before October 1990 in which such individual participated in a community work experience program under section 409 (as in effect for a State immediately before the effective date for that State of the amendments made by title II of the Family Support Act of 1988) or the work incentive program established under part C (as in effect for a State immediately before such effective date)" before the semicolon.

42 USC 607 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5063. FAMILY SUPPORT ACT DEMONSTRATION PROJECTS.

42 USC 1315 note.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315; P.L. 100-385) is amended—

(1) in subsection (a), by inserting "in each of the fiscal years 1990, 1991, and 1992," before "shall"; and

(2) in subsection (e), by striking "September 30, 1989" and inserting "September 30 of the fiscal year specified in the agreement described in subsection (a)".

SEC. 5064. STUDY OF JOBS PROGRAMS OPERATED BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS.

(a) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States (in this section referred to as the "Comptroller") shall conduct a study of the implementation of section 482(i) of the Social Security Act (42 U.S.C. 682(i)) relating to job opportunities and basic skills training programs (in this section referred to as "JOBS programs") operated by Indian tribes and Alaska Native organizations (as defined in paragraph (5) of such section 482(i)).

(b) REQUIREMENTS FOR STUDY.—In conducting the study described in subsection (a), the Comptroller shall—

(1) identify any problems associated with the implementation of section 482(i) of the Social Security Act; and

(2) assess (to the extent practicable) the effectiveness of the JOBS programs operated by Indian tribes and Alaska Native organizations.

(c) REPORT.—Upon completion of the study described in subsection (a), the Comptroller shall submit a report to the appropriate committees of the Congress that includes—

(1) a summary of the findings of the study; and

(2) recommendations with respect to proposed legislation or changes in administrative policy to improve the effectiveness of JOBS programs conducted pursuant to section 482(i) of the Social Security Act.

CHAPTER 5—CHILD WELFARE AND FOSTER CARE

SEC. 5071. ACCOUNTING FOR ADMINISTRATIVE COSTS.

(a) RECLASSIFICATION.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting "provision of child placement services and for the" before "proper and efficient".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. 42 USC 674 note.

SEC. 5072. SECTION 427 TRIENNIAL REVIEWS.

(a) AMENDMENTS TO SECTION 10406 OF OBRA 1989.—Section 10406 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 627 note) is amended—

(1) by striking "1991" and inserting "1992";

(2) by striking "1990" and inserting "1991"; and

(3) in the section heading, by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENT.—The item relating to section 10406 in the table of contents appearing immediately after section 10000 of such Act is amended by striking "1990" and inserting "1991".

SEC. 5073. INDEPENDENT LIVING INITIATIVES.

(a) IN GENERAL.—Section 477(a)(2)(C) (42 U.S.C. 677(a)(2)(C)) is amended—

(1) by inserting "who has not attained age 21" after "may at the option of the State also include any child"; and

(2) by striking ", but such child" and all that follows through "care".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made under part E of title IV of the Social Security Act for fiscal years beginning in or after fiscal year 1991. 42 USC 677 note.

CHAPTER 6—CHILD CARE

SEC. 5081. GRANTS TO STATES FOR CHILD CARE.

(a) RULES GOVERNING PROVISION OF CHILD CARE TO ELIGIBLE FAMILIES.—Section 402 (42 U.S.C. 602) is amended by adding at the end the following:

"(i)(1) Each State agency may, to the extent that it determines that resources are available, provide child care in accordance with paragraph (2) to any low income family that the State determines—

"(A) is not receiving aid under the State plan approved under this part;

"(B) needs such care in order to work; and

"(C) would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided.

"(2) The State agency may provide child care pursuant to paragraph (1) by—

"(A) providing such care directly;

"(B) arranging such care through providers by use of purchase of service contracts or vouchers;

"(C) providing cash or vouchers in advance to the family;

"(D) reimbursing the family; or

"(E) adopting such other arrangements as the agency deems appropriate.

"(3)(A) A family provided with child care under paragraph (1) shall contribute to such care in accordance with a sliding scale formula established by the State agency based on the family's ability to pay.

"(B) The State agency shall make payment for the cost of child care provided under paragraph (1) with respect to a family in an amount that is the lesser of—

"(i) the actual cost of such care; and

"(ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).

"(4) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this subsection—

"(A) shall not be treated as income or as a deductible expense for purposes of any other Federal or federally assisted program that bases eligibility for or amount of benefits upon need; and

"(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.

"(5) Amounts expended by the State agency for child care under paragraph (1) shall be treated as amounts for which payment may be made to a State under section 403(n) only to the extent that—

"(A) such amounts are paid in accordance with paragraph (3)(B);

"(B) the care involved meets applicable standards of State and local law;

"(C) the provider of the care—

"(i) in the case of a provider who is not an individual that provides such care solely to members of the family of the individual, is licensed, regulated, or registered by the State or locality in which the care is provided; and

"(ii) allows parental access; and

"(D) such amounts are not used to supplant any other Federal or State funds used for child care services.

"(6)(A)(i) Each State shall prepare reports annually, beginning with fiscal year 1993, on the activities of the State carried out with funds made available under section 403(n).

"(ii) The State shall make available for public inspection within the State copies of each report required by this paragraph, shall transmit a copy of each such report to the Secretary, and shall provide a copy of each such report, on request, to any interested public agency.

"(iii) The Secretary shall annually compile, and submit to the Congress, the State reports transmitted to the Secretary pursuant to clause (ii).

"(B) Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—

"(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services;

"(ii) the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules;

"(iii) the child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of service specified in clause (i); and

"(iv) the enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

"(C) Within 12 months after the date of the enactment of this subsection, the Secretary shall establish uniform reporting requirements for use by the States in preparing the information required by this paragraph, and make such other provision as may be necessary or appropriate to ensure that compliance with this subsection will not be unduly burdensome on the States.

"(D) Not later than July 1, 1992, the Secretary shall issue a report on the implementation of this subsection, based on such information as as has [58] been made available to the Secretary by the States.".

(b) PAYMENTS TO STATES.—Section 403 (42 U.S.C. 603) is amended by adding at the end the following:

"(n)(1) In addition to any payment under subsection (a) or (l), each State shall be entitled to payment from the Secretary of an amount equal to the lesser of—

"(A) the Federal medical assistance percentage (as defined in section 1905(b)) of the expenditures by the State in providing child care services pursuant to section 402(i), and in administering the provision of such child care services, for any fiscal year; and

"(B) the limitation determined under paragraph (2) with respect to the State for the fiscal year.

"(2)(A) The limitation determined under this paragraph with respect to a State for any fiscal year is the amount that bears the same ratio to the amount specified in subparagraph (B) for such fiscal year as the number of children residing in the State in the second preceding fiscal year bears to the number of children residing in the United States in the second preceding fiscal year.

"(B) The amount specified in this subparagraph is—

"(i) $300,000,000 for fiscal year 1991;

"(ii) $300,000,000 for fiscal year 1992;

"(iii) $300,000,000 for fiscal year 1993;

"(iv) $300,000,000 for fiscal year 1994; and

"(v) $300,000,000 for fiscal year 1995, and for each fiscal year thereafter.

"(C) If the limitation determined under subparagraph (A) with respect to a State for a fiscal year exceeds the amount paid to the State under this subsection for the fiscal year, the limitation determined under this paragraph with respect to the State for the

[58] So in original. Probably should be "information as has".

immediately succeeding fiscal year shall be increased by the amount of such excess.

"(3) Amounts appropriated for a fiscal year to carry out this part shall be made available for payments under this subsection for such fiscal year.".

(c) AMENDMENTS TO GRANTS TO STATES TO IMPROVE CHILD CARE LICENSING AND REGISTRATION REQUIREMENTS, AND TO MONITOR CHILD CARE PROVIDED TO CHILDREN RECEIVING AFDC.—

(1) GRANTS INCREASED AND EXTENDED.—Section 402(g)(6)(D) (42 U.S.C. 602(g)(6)(D)) is amended by inserting ", and $50,000,000 for each of fiscal years 1992, 1993, and 1994" before the period.

(2) NEW PURPOSES FOR GRANTS.—Section 402(g)(6)(A) (42 U.S.C. 602(g)(6)(A)) is amended by striking "and to monitor child care provided to children receiving aid under the State plan approved under subsection (a)" and inserting "to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers".

(3) HALF OF GRANT REQUIRED TO BE EXPENDED FOR TRAINING OF CHILD CARE PROVIDERS.—Section 402(g)(6) (42 U.S.C. 602(g)(6)) is amended by adding at the end the following:

"(E) Each State to which the Secretary makes a grant under this paragraph shall expend not less than 50 percent of the amount of the grant to provide for the training of child care providers.".

(d) COORDINATION WITH OTHER PROGRAMS FOR CHILDREN.—Section 402(g)(7) (42 U.S.C. 602(g)(7)) is amended by inserting "and subsection (i)" after "this subsection".

42 USC 602 note.

(e) EFFECTIVE DATE.—Except as otherwise expressly provided, the amendments made by this section shall take effect on October 1, 1990.

SEC. 5082. CHILD CARE AND DEVELOPMENT BLOCK GRANT.

Chapter 8 of subtitle A of title IV of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) is amended—

(1) by redesignating subchapters C, D, and E, as subchapters D, E, and F, respectively; and

(2) by inserting after subchapter B the following new subchapter:

Child Care and Development Block Grant Act of 1990.

"Subchapter C—Child Care and Development Block Grant

42 USC 9801 note.

"SEC. 658A. SHORT TITLE.

"This subchapter may be cited as the 'Child Care and Development Block Grant Act of 1990'.

42 USC 9858.

"SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subchapter, $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

42 USC 9858a.

"SEC. 658C. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

"The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

42 USC 9858b.

"SEC. 658D. LEAD AGENCY.

"(a) DESIGNATION.—The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an

application submitted to the Secretary under section 658E, an appropriate State agency that complies with the requirements of subsection (b) to act as the lead agency.

"(b) DUTIES.—

"(1) IN GENERAL.—The lead agency shall—

"(A) administer, directly or through other State agencies, the financial assistance received under this subchapter by the State;

"(B) develop the State plan to be submitted to the Secretary under section 658E(a);

"(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

"(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

"(2) DEVELOPMENT OF PLAN.—In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government. Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.

"SEC. 658E. APPLICATION AND PLAN. 42 USC 9858c.

"(a) APPLICATION.—To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

"(1) an assurance that the State will comply with the requirements of this subchapter; and

"(2) a State plan that meets the requirements of subsection (c).

"(b) PERIOD COVERED BY PLAN.—The State plan contained in the application under subsection (a) shall be designed to be implemented—

"(1) during a 3-year period for the initial State plan; and

"(2) during a 2-year period for subsequent State plans.

"(c) REQUIREMENTS OF A PLAN.—

"(1) LEAD AGENCY.—The State plan shall identify the lead agency designated under section 658D.

"(2) POLICIES AND PROCEDURES.—The State plan shall:

"(A) PARENTAL CHOICE OF PROVIDERS.—Provide assurances that—

"(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter, other than through assistance provided under paragraph (3)(C), are given the option either—

"(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

"(II) to receive a child care certificate as defined in section 658P(2);

"(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

"(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.

"(B) UNLIMITED PARENTAL ACCESS.—Provide assurances that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers.

"(C) PARENTAL COMPLAINTS.—Provide assurances that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request.

"(D) CONSUMER EDUCATION.—Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.

"(E) COMPLIANCE WITH STATE AND LOCAL REGULATORY REQUIREMENTS.—Provide assurances that—

"(i) all providers of child care services within the State for which assistance is provided under this subchapter comply with all licensing or regulatory requirements (including registration requirements) applicable under State and local law; and

"(ii) providers within the State that are not required to be licensed or regulated under State or local law are required to be registered with the State prior to payment being made under this subchapter, in accordance with procedures designed to facilitate appropriate payment to such providers, and to permit the State to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to regulatory requirements in the State, and that such providers shall be permitted to register with the State after selection by the parents of eligible children and before such payment is made.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers within the State that provide services for which assistance is provided under this subchapter than the standards or requirements imposed on other child care providers in the State.

"(F) ESTABLISHMENT OF HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

"(i) the prevention and control of infectious diseases (including immunization);

"(ii) building and physical premises safety; and

"(iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on the date of enactment of this subchapter under State or local law.

"(G) COMPLIANCE WITH STATE AND LOCAL HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

"(H) REDUCTION IN STANDARDS.—Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on the date of enactment of this subchapter, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 658K.

"(I) REVIEW OF STATE LICENSING AND REGULATORY REQUIREMENTS.—Provide assurances that not later than 18 months after the date of the submission of the application under section 658E, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on the date of the enactment of this subchapter.

"(J) SUPPLEMENTATION.—Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.

"(3) USE OF BLOCK GRANT FUNDS.—

"(A) GENERAL REQUIREMENT.—The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) and (C).

"(B) CHILD CARE SERVICES.—Subject to the reservation contained in subparagraph (C), the State shall use amounts provided to the State for each fiscal year under this subchapter for—

"(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children

in the State on a sliding fee scale basis using funding methods provided for in section 658E(c)(2)(A), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs; and

"(ii) activities designed to improve the availability and quality of child care.

"(C) ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE AND TO INCREASE THE AVAILABILITY OF EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL CARE SERVICES.—The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 658G) and to provide before- and after-school and early childhood development services (as described in section 658H).

"(4) PAYMENT RATES.—

"(A) IN GENERAL.—The State plan shall provide assurances that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs. Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed to create a private right of action.

"(5) SLIDING FEE SCALE.—The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

"(d) APPROVAL OF APPLICATION.—The Secretary shall approve an application that satisfies the requirements of this section.

42 USC 9858d.

SEC. 658F.[59] LIMITATIONS ON STATE ALLOTMENTS.

"(a) NO ENTITLEMENT TO CONTRACT OR GRANT.—Nothing in this subchapter shall be construed—

"(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

"(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

"(b) CONSTRUCTION OF FACILITIES.—

"(1) IN GENERAL.—No funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

"(2) SECTARIAN AGENCY OR ORGANIZATION.—In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in

[59] So in original. Probably should be " "SEC. 658F.".

paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 658E(c)(2)(F).

"SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE. 42 USC 9858e.

"A State that receives financial assistance under this subchapter shall use not less than 20 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year for one or more of the following:

"(1) RESOURCE AND REFERRAL PROGRAMS.—Operating directly or providing financial assistance to private nonprofit organizations or public organizations (including units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

"(2) GRANTS OR LOANS TO ASSIST IN MEETING STATE AND LOCAL STANDARDS.—Making grants or providing loans to child care providers to assist such providers in meeting applicable State and local child care standards.

"(3) MONITORING OF COMPLIANCE WITH LICENSING AND REGULATORY REQUIREMENTS.—Improving the monitoring of compliance with, and enforcement of, State and local licensing and regulatory requirements (including registration requirements).

"(4) TRAINING.—Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the care of children with special needs.

"(5) COMPENSATION.—Improving salaries and other compensation paid to full- and part-time staff who provide child care services for which assistance is provided under this subchapter.

"SEC. 658H. EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL SERVICES. 42 USC 9858f.

"(a) IN GENERAL.—A State that receives financial assistance under this subchapter shall use not less than 75 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year to establish or expand and conduct, through the provision of grants or contracts, early childhood development or before- and after-school child care programs, or both.

"(b) PROGRAM DESCRIPTION.—Programs that receive assistance under this section shall—

"(1) in the case of early childhood development programs, consist of services that are not intended to serve as a substitute for a compulsory academic programs but that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

"(2) in the case of before- and after-school child care programs—

"(A) be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such

days that regular instructional services are not in session; and

"(B) not be intended to extend or replace the regular academic program.

"(c) PRIORITY FOR ASSISTANCE.—In awarding grants and contracts under this section, the State shall give the highest priority to geographic areas within the State that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act of 1965, and shall then give priority to—

"(1) any other areas with concentrations of poverty; and

"(2) any areas with very high or very low population densities.

42 USC 9858g.

"SEC. 658I. ADMINISTRATION AND ENFORCEMENT.

"(a) ADMINISTRATION.—The Secretary shall—

"(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

"(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

"(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

"(b) ENFORCEMENT.—

"(1) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 658E(c) for the State, and shall have the power to terminate payments to the State in accordance with paragraph (2).

"(2) NONCOMPLIANCE.—

"(A) IN GENERAL.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

"(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 658E(c) for the State; or

"(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

"(B) ADDITIONAL SANCTIONS.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

"(C) NOTICE.—The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

"(3) ISSUANCE OF RULES.—The Secretary shall establish by rule procedures for—

"(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

"(B) imposing sanctions under this section.

"SEC. 658J. PAYMENTS. 42 USC 9858h.

"(a) IN GENERAL.—Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 658E(d) shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 658O for such fiscal year.

"(b) METHOD OF PAYMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

"(2) LIMITATION.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 658E(c)(3).

"(c) SPENDING OF FUNDS BY STATE.—Payments to a State from the allotment under section 658O for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

"SEC. 658K. ANNUAL REPORT AND AUDITS. 42 USC 9858i.

"(a) ANNUAL REPORT.—Not later than December 31, 1992, and annually thereafter, a State that receives assistance under this subchapter shall prepare and submit to the Secretary a report—

"(1) specifying the uses for which the State expended funds specified under paragraph (3) of section 658E(c) and the amount of funds expended for such uses;

"(2) containing available data on the manner in which the child care needs of families in the State are being fulfilled, including information concerning—

"(A) the number of children being assisted with funds provided under this subchapter, and under other Federal child care and pre-school programs;

"(B) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

"(C) salaries and other compensation paid to full- and part-time staff who provide child care services; and

"(D) activities in the State to encourage public-private partnerships that promote business involvement in meeting child care needs;

"(3) describing the extent to which the affordability and availability of child care services has increased;

"(4) if applicable, describing, in either the first or second such report, the findings of the review of State licensing and regulatory requirements and policies described in section 658E(c), including a description of actions taken by the State in response to such reviews;

"(5) containing an explanation of any State action, in accordance with section 658E, to reduce the level of child care standards in the State, if applicable; and

"(6) describing the standards and health and safety requirements applicable to child care providers in the State, including a description of State efforts to improve the quality of child care;

during the period for which such report is required to be submitted.

"(b) AUDITS.—

"(1) REQUIREMENT.—A State shall, after the close of each program period covered by a [60] application approved under section 658E(d) audit its expenditures during such program period from amounts received under this subchapter.

"(2) INDEPENDENT AUDITOR.—Audits under this subsection shall be conducted by an entity that is independent of any agency administering activities that receive assistance under this subchapter and be in accordance with generally accepted auditing principles.

"(3) SUBMISSION.—Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

"(4) REPAYMENT OF AMOUNTS.—Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitles under this subchapter.

42 USC 9858j.

"SEC. 658L. REPORT BY SECRETARY.

"Not later than July 31, 1993, and annually thereafter, the Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

42 USC 9858k.

"SEC. 658M. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

"(a) SECTARIAN PURPOSES AND ACTIVITIES.—No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 658E(c)(2)(A)(i)(I) or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

"(b) TUITION.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

"(1) any services provided to such students during the regular school day;

"(2) any services for which such students receive academic credit toward graduation; or

"(3) any instructional services which supplant or duplicate the academic program of any public or private school.

[60] So in original. Probably should be "an".

"SEC. 658N. NONDISCRIMINATION. 42 USC 9858*l*.

"(a) RELIGIOUS NONDISCRIMINATION.—

"(1) CONSTRUCTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

"(B) EXCEPTION.—A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

"(2) DISCRIMINATION AGAINST CHILD.—

"(A) IN GENERAL.—A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

"(B) NON-FUNDED CHILD CARE SLOTS.—Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

"(3) EMPLOYMENT IN GENERAL.—

"(A) PROHIBITION.—A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

"(B) QUALIFIED APPLICANTS.—If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

"(C) PRESENT EMPLOYEES.—This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on the date of enactment of this subchapter.

"(4) EMPLOYMENT AND ADMISSION PRACTICES.—Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary respon-

sibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

"(b) EFFECT ON STATE LAW.—Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

42 USC 9858m.

"SEC. 658O. AMOUNTS RESERVED; ALLOTMENTS.

"(a) AMOUNTS RESERVED.—

"(1) TERRITORIES AND POSSESSIONS.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be allotted in accordance with their respective needs.

"(2) INDIANS TRIBES.—The Secretary shall reserve not more than 3 percent of the amount appropriated under section 658B in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

"(b) STATE ALLOTMENT.—

"(1) GENERAL RULE.—From the amounts appropriated under section 658B for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

"(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

"(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

"(2) YOUNG CHILD FACTOR.—The term 'young child factor' means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

"(3) SCHOOL LUNCH FACTOR.—The term 'school lunch factor' means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

"(4) ALLOTMENT PERCENTAGE.—

"(A) IN GENERAL.—The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

"(B) LIMITATIONS.—If an allotment percentage determined under subparagraph (A)—

"(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

"(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

"(C) PER CAPITA INCOME.—For purposes of subparagraph (A), per capita income shall be—

"(i) determined at 2-year intervals;

"(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

"(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

"(c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN.—

"(1) GENERAL AUTHORITY.—From amounts reserved under subsection (a)(2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

"(2) APPLICATIONS AND REQUIREMENTS.—An application for a grant or contract under this section shall provide that:

"(A) COORDINATION.—The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

"(B) SERVICES ON RESERVATIONS.—In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

"(C) REPORTS AND AUDITS.—The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

"(3) CONSIDERATION OF SECRETARIAL APPROVAL.—In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

"(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

"(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

"(4) THREE-YEAR LIMIT.—Grants or contracts under this section shall be for periods not to exceed 3 years.

"(5) DUAL ELIGIBILITY OF INDIAN CHILDREN.—The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to

participate in programs and activities carried our [61] under a grant to the State or States under this subchapter.

"(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

"(e) REALLOTMENTS.—

"(1) IN GENERAL.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 658E(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

"(2) LIMITATIONS.—

"(A) REDUCTION.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 658E(d).

"(B) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

"(3) AMOUNTS REALLOTTED.—For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

"(f) DEFINITION.—For the purposes of this section, the term 'State' includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

42 USC 9858n.

"SEC. 658P. DEFINITIONS.

"As used in this subchapter:

"(1) CAREGIVER.—The term 'caregiver' means an individual who provides a service directly to an eligible child on a person-to-person basis.

"(2) CHILD CARE CERTIFICATE.—The term 'child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

"(3) ELEMENTARY SCHOOL.—The term 'elementary school' means a day or residential school that provides elementary education, as determined under State law.

"(4) ELIGIBLE CHILD.—The term 'eligible child' means an individual—

"(A) who is less than 13 years of age;

"(B) whose family income does not exceed 75 percent of the State median income for a family of the same size; and

"(C) who—

"(i) resides with a parent or parents who are working or attending a job training or educational program; or

[61] So in original. Probably should be "out".

"(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

"(5) ELIGIBLE CHILD CARE PROVIDER.—The term 'eligible child care provider' means—

"(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

"(i) is licensed, regulated, or registered under State law as described in section 658E(c)(2)(E); and

"(ii) satisfies the State and local requirements, including those referred to in section 658E(c)(2)(F); applicable to the child care services it provides; or

"(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, niece, or nephew of such provider, if such provider is registered and complies with any State requirements that govern child care provided by the relative involved.

"(6) FAMILY CHILD CARE PROVIDER.—The term 'family child care provider' means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

"(7) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

"(8) LEAD AGENCY.—The term 'lead agency' means the agency designated under section 658B(a).

"(9) PARENT.—The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(10) SECONDARY SCHOOL.—The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law.

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services unless the context specifies otherwise.

"(12) SLIDING FEE SCALE.—The term 'sliding fee scale' means a system of cost sharing by a family based on income and size of the family.

"(13) STATE.—The term 'State' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(14) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

"SEC. 658Q. PARENTAL RIGHTS AND RESPONSIBILITIES. 42 USC 9858o.

"Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

"SEC. 658R. SEVERABILITY. 42 USC 9858p.

"If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not

affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.".

SUBTITLE B—OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SEC. 5100. TABLE OF CONTENTS.

SEC. 5101. AMENDMENT OF THE SOCIAL SECURITY ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 5102. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1), in the matter following subparagraph (C), by inserting "or" after "hearing,", and by striking "pending, or (iii) June 1991." and inserting "pending."; and

(2) by striking paragraph (3).

SEC. 5103. REPEAL OF SPECIAL DISABILITY STANDARD FOR WIDOWS AND WIDOWERS.

(a) IN GENERAL.—Section 223(d)(2) (42 U.S.C. 423(d)(2)) is amended—

(1) in subparagraph (A), by striking "(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) or (f))";

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 216(i)(1) (42 U.S.C. 416(i)(1)) is amended by striking "(2)(C)" and inserting "(2)(B)".

(2) Section 223(f)(1)(B) (42 U.S.C. 423(f)(1)(B)) is amended to read as follows:

"(B) the individual is now able to engage in substantial gainful activity; or".

(3) Section 223(f)(2)(A)(ii) (42 U.S.C. 423(f)(2)(A)(ii)) is amended to read as follows:

"(ii) the individual is now able to engage in substantial gainful activity, or".

(4) Section 223(f)(3) (42 U.S.C. 423(f)(3)) is amended by striking "therefore—" and all that follows and inserting "therefore the individual is able to engage in substantial gainful activity; or".

(5) Section 223(f) is further amended, in the matter following paragraph (4), by striking "(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)" each place it appears.

(c) TRANSITIONAL RULES RELATING TO MEDICAID AND MEDICARE ELIGIBILITY.—

(1) DETERMINATION OF MEDICAID ELIGIBILITY.—Section 1634(d) (42 U.S.C. 1383c(d)) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by striking "(d) If any person—" and inserting "(d)(1) This subsection applies with respect to any person who—";

(C) in subparagraph (A) (as redesignated), by striking "as required" and all that follows through "but not entitled" and inserting "being then not entitled";

(D) in subparagraph (B) (as redesignated), by striking "section 1616(a)," and inserting "section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66)."; and

(E) by striking "such person shall" and all that follows and inserting the following new paragraph:

"(2) For purposes of title XIX, each person with respect to whom this subsection applies—

"(A) shall be deemed to be a recipient of supplemental security income benefits under this title if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

"(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) if such person received such a payment for the month

before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93-66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of title XVIII.".

(2) INCLUSION OF MONTHS OF SSI ELIGIBILITY WITHIN 5-MONTH DISABILITY WAITING PERIOD AND 24-MONTH MEDICARE WAITING PERIOD.—

(A) WIDOW'S BENEFITS BASED ON DISABILITY.—Section 202(e)(5) (42 U.S.C. 402(e)(5)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting "(A)" after "(5)"; and

(iv) by adding at the end the following new subparagraph:

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.".

(B) WIDOWER'S BENEFITS BASED ON DISABILITY.—Section 202(f)(6) (42 U.S.C. 402(f)(6)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting "(A)" after "(6)"; and

(iv) by adding at the end the following new subparagraph:

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.".

(C) MEDICARE BENEFITS.—Section 226(e)(1) (42 U.S.C. 426(e)(1)) is amended—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(ii) by inserting "(A)" after "(e)(1)"; and

(iii) by adding at the end the following new subparagraph:

"(B) For purposes of subsection (b)(2)(A)(iii), each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.".

(d) DEEMED DISABILITY FOR PURPOSES OF ENTITLEMENT TO WIDOW'S AND WIDOWER'S INSURANCE BENEFITS FOR WIDOWS AND WIDOWERS ON SSI ROLLS.—

(1) WIDOW'S INSURANCE BENEFITS.—Section 202(e) (42 U.S.C. 402(e)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(2) WIDOWER'S INSURANCE BENEFITS.—Section 202(f) (42 U.S.C. 402(f)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(e) EFFECTIVE DATE.— 42 USC 402 note.

(1) IN GENERAL.—The amendments made by this section (other than paragraphs (1) and (2)(C) of subsection (c)) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) shall apply with respect to items and services furnished after December 1990.

(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

(A) is entitled to disability insurance benefits under section 223 of the Social Security Act for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act, or State supplementary payments of

the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for January 1991,

(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990, and

(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

SEC. 5104. DEPENDENCY REQUIREMENTS APPLICABLE TO A CHILD ADOPTED BY A SURVIVING SPOUSE.

(a) IN GENERAL.—Section 216(e) (42 U.S.C. 416(e)) is amended in the second sentence—

(1) by striking "at the time of such individual's death living in such individual's household" and inserting "either living with or receiving at least one-half of his support from such individual at the time of such individual's death"; and

(2) by striking "; except" and all that follows and inserting a period.

42 USC 416 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.

SEC. 5105. REPRESENTATIVE PAYEE REFORMS.

(a) IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SELECTION AND RECRUITMENT PROCESS.—

(1) AUTHORITY FOR CERTIFICATION OF PAYMENTS TO REPRESENTATIVE PAYEES.—

(A) TITLE II.—Section 205(j)(1) (42 U.S.C. 405(j)) is amended to read as follows:

"REPRESENTATIVE PAYEES

"(j)(1) If the Secretary determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's 'representative payee'). If the Secretary or a court of competent jurisdiction determines that a representative payee has misused any individual's

benefit paid to such representative payee pursuant to this subsection or section 1631(a)(2), the Secretary shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or to the individual.".

(B) TITLE XVI.—

(i) IN GENERAL.—Section 1631(a)(2)(A) (42 U.S.C. 1383(a)(2)(A)) is amended to read as follows:

"(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

"(ii) Upon a determination by the Secretary that the interest of such individual would be served thereby, or in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual or eligible spouse.

"(iii) If the Secretary or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 205(j)(1), the Secretary shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse.".

(ii) CONFORMING AMENDMENTS.—Section 1631(a)(2)(C) (42 U.S.C. 1383(a)(2)(C)) is amended—

(I) in clause (i), by striking "a person other than the individual or spouse entitled to such payment" and inserting "representative payee of an individual or spouse";

(II) in clauses (ii), (iii), and (iv), by striking "other person to whom such payment is made" each place it appears and inserting "representative payee"; and

(III) in clause (v)—

(aa) by striking "person receiving payments on behalf of another" and inserting "representative payee"; and

(bb) by striking "person receiving such payments" and inserting "representative payee".

(2) PROCEDURE FOR SELECTING REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j)(2) (42 U.S.C. 405(j)(2)) is amended to read as follows:

"(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

"(i) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

"(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Secretary in regulations).

"(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title or title XVI,

"(II) verify such person's social security account number (or employer identification number),

"(III) determine whether such person has been convicted of a violation of section 208 or 1632, and

"(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title or title XVI.

"(ii) The Secretary shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

"(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii), by reason of misuse of funds paid as benefits under this title or title XVI, and

"(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208 or 1632.

"(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

"(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

"(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in section 1631(a)(2)(B)(ii)(IV), or

"(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(ii) The Secretary shall prescribe regulations under which the Secretary may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

"(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual,

"(II) a legal guardian or legal representative of such individual,

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary,

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

"(III) no other more suitable representative payee can be found.

"(D)(i) Subject to clause (ii), if the Secretary makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

"(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Secretary's determination, legally incompetent or under the age of 15.

"(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Secretary determines is in the best interest of the individual entitled to such benefits.

"(E)(i) Any individual who is dissatisfied with a determination by the Secretary to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Secretary to the same extent as is provided in subsection (b), and to judicial review of the Secretary's final decision as is provided in subsection (g).

"(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Secretary shall provide written notice of the Secretary's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

"(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

(ii) TITLE XVI.—Section 1631(a)(2)(B) (42 U.S.C. 1383(a)(2)(B)) is amended to read as follows:

"(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

"(I) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

"(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Secretary in regulations).

"(ii) As part of the investigation referred to in clause (i)(I), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under title II or this title;

"(II) verify the social security account number (or employer identification number) of such person;

"(III) determine whether such person has been convicted of a violation of section 208 or 1632; and

"(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 205(j), by reason of misuse of funds paid as benefits under title II or this title.

"(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

"(I) such person has previously been convicted as described in clause (ii)(III);

"(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 205(j) has previously been revoked as described in section 205(j)(2)(B)(i)(IV); or

"(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(iv) The Secretary shall prescribe regulations under which the Secretary may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best

interest of the individual or eligible spouse whose benefits under this title would be paid to such person pursuant to subparagraph (A)(ii).

"(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual;

"(II) a legal guardian or legal representative of such individual;

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this title to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary;

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

"(III) no other more suitable representative payee can be found.

"(vii) Subject to clause (viii), if the Secretary makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

"(viii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (vii) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Secretary's determination, legally incompetent, under the age 15 years, or a drug addict or alcoholic referred to in section 1611(e)(3)(A).

"(ix) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Secretary determines is in the best interests of the individual entitled to such benefits.

"(x) Any individual who is dissatisfied with a determination by the Secretary to pay such individual's benefits to a representative payee under this title, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by

the Secretary, and to judicial review of the Secretary's final decision, to the same extent as is provided in subsection (c).

"(xi) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Secretary shall provide written notice of the Secretary's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

"(xii) Any notice described in clause (xi) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (x) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

42 USC 405 note.

(B) REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act, of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(3) PROVISION FOR COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4)(A) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

"(i) 10 percent of the monthly benefit involved, or

"(ii) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

"(B) For purposes of this paragraph, the term 'qualified organization' means any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee and which, in accordance with any applicable regulations of the Secretary—

"(i) regularly provides services as the representative payee, pursuant to this subsection or section 1631(a)(2), concurrently to 5 or more individuals,

"(ii) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual, and

"(iii) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(D) This paragraph shall cease to be effective on July 1, 1994.".

(ii) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended—

(I) by redesignating subparagraph (D) as subparagraph (E);

(III) [62] by inserting after subparagraph (C) the following:

"(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

"(I) 10 percent of the monthly benefit involved, or

"(II) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

"(ii) For purposes of this subparagraph, the term 'qualified organization' means any community-based nonprofit social service agency which—

"(I) is bonded or licensed in each State in which the agency serves as a representative payee;

"(II) in accordance with any applicable regulations of the Secretary—

"(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 205(j)(4) concurrently to 5 or more individuals;

"(bb) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual; and

"(cc) was in existence on October 1, 1988.

[62] So in original. Probably should be "(II)".

The Secretary shall prescribe regulations under which the Secretary may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(iv) This subparagraph shall cease to be effective on July 1, 1994.".

42 USC 405 note.

(B) STUDIES AND REPORTS.—

(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A).

(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.

42 USC 405 note.

(4) STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.

42 USC 405 note.

(5) EFFECTIVE DATES.—

(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) shall take effect July 1, 1991, and shall apply only with respect to—

(i) certifications of payment of benefits under title II of the Social Security Act to representative payees made on or after such date; and

(ii) provisions for payment of benefits under title XVI of such Act to representative payees made on or after such date.

(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) shall take effect July 1,

1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.

(b) IMPROVEMENTS IN RECORDKEEPING AND AUDITING REQUIREMENTS.—

(1) IMPROVED ACCESS TO CERTAIN INFORMATION.—

(A) IN GENERAL.—Section 205(j)(3) (42 U.S.C. 605(j)(3)) is amended— 42 USC 405.

(i) by striking subparagraph (B);

(ii) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

(iii) in subparagraph (D) (as so redesignated), by striking "(A), (B), (C), and (D)" and inserting "(A), (B), and (C)"; and

(iv) by adding at the end the following new subparagraphs:

"(E) The Secretary shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

"(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1631(a)(2), and

"(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1631(a)(2).

"(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1631(a)(2) and which are located in the area served by such servicing office.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act (as amended by subparagraph (A) of this paragraph) are satisfied as of such date. 42 USC 405 note.

(2) STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES.— 42 USC 405 note.

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act, which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term "high-risk representative payee" means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

(iii) is a creditor of such individual, or

(iv) is in such other category of payees as the Secretary may determine appropriate.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).

42 USC 405 note.

(3) DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II, benefits under title XVI, or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving

benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

(E) STATE.—For purposes of this paragraph, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(c) RESTITUTION.—

(1) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (5) (as so redesignated by subsection (a)(3)(A)(i) of this section) as paragraph (6) and by inserting after paragraph (4) (as added by subsection (a)(3)(A)(i)) the following new paragraph:

"(5) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(2) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended by redesignating subparagraph (E) (as so redesignated by subsection (a)(3)(A)(ii)(I) of this section) as subparagraph (F) and by inserting after subparagraph (D) (as added by subsection (a)(3)(A)(i)(III)) the following new subparagraph:

"(E) RESTITUTION.—In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(d) REPORTS TO THE CONGRESS.—

(1) IN GENERAL.—

(A) TITLE II.—Section 205(j)(5) (as so redesignated by subsection (c)(1) of this section) is amended to read as follows:

"(5) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a

misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(B) TITLE XVI.—Section 1631(a)(2)(E) (42 U.S.C. 1383(a)(2)(E)), as so redesignated by subsection (c)(2) of this section, is amended to read as follows:

"(E) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

"(i) the number of cases in which the representative payee was changed;

"(ii) the number of cases discovered where there has been a misuse of funds;

"(iii) how any such cases were dealt with by the Secretary;

"(iv) the final disposition of such cases (including any criminal penalties imposed); and

"(v) such other information as the Secretary determines to be appropriate.".

42 USC 405 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to annual reports issued for years after 1991.

(3) FEASIBILITY STUDY REGARDING INVOLVEMENT OF DEPARTMENT OF VETERANS AFFAIRS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in cooperation with the Secretary of Veterans Affairs, shall conduct a study of the feasibility of designating the Department of Veterans Affairs as the lead agency for purposes of selecting, appointing, and monitoring representative payees for those individuals who receive benefits paid under title II or XVI of the Social Security Act and benefits paid by the Department of Veterans Affairs. Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of such study, together with any recommendations.

SEC. 5106. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—

(1) TITLE II.—Subsection (a) of section 206 (42 U.S.C. 406(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) in the fifth sentence, by striking "Whenever" and inserting "Except as provided in paragraph (2)(A), whenever"; and

(C) by striking the sixth sentence and all that follows through "Any person who" in the seventh sentence and inserting the following:

"(2)(A) In the case of a claim of entitlement to past-due benefits under this title, if—

"(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in

writing to the Secretary prior to the time of the Secretary's determination regarding the claim,

"(ii) the fee specified in the agreement does not exceed the lesser of—

"(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1127(a)), or

"(II) $4,000, and

"(iii) the determination is favorable to the claimant,

then the Secretary shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Secretary may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 215(i) since such date. The Secretary shall publish any such increased amount in the Federal Register.

"(B) For purposes of this subsection, the term 'past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223.

"(C) In the case of a claim with respect to which the Secretary has approved an agreement pursuant to subparagraph (A), the Secretary shall provide the claimant and the person representing the claimant a written notice of—

"(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1127(a)) and the dollar amount of the past-due benefits payable to the claimant,

"(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

"(iii) a description of the procedures for review under paragraph (3).

"(3)(A) The Secretary shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(C)—

"(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Secretary to reduce the maximum fee, or

"(ii) the person representing the claimant submits a written request to the Secretary to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Secretary to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

"(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Secretary determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review

shall be conducted by another person designated by the Secretary for such purpose.

"(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Secretary or by an administrative law judge or other person (other than such adjudicator) who is designated by the Secretary.

"(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

"(4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Secretary shall, notwithstanding section 205(i), certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1127(a)).

"(B) The Secretary shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.

"(5) Any person who".

(2) TITLE XVI.—Paragraph (2)(A) of section 1631(d) (42 U.S.C. 1383(d)(2)(A)) is amended to read as follows:

"(2)(A) The provisions of section 206(a) (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of title II, except that paragraph (2) thereof shall be applied—

"(i) by substituting 'section 1127(a) or 1631(g)' for 'section 1127(a)'; and

"(ii) by substituting 'section 1631(a)(7)(A) or the requirements of due process of law' for 'subsection (g) or (h) of section 223'.".

(b) PROTECTION OF ATTORNEY'S FEES FROM OFFSETTING SSI BENEFITS.—Subsection (a) of section 1127 (42 U.S.C. 1320a-6(a)) is amended by adding at the end the following new sentence: "A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 206(a)(4).".

(c) LIMITATATION OF TRAVEL EXPENSES FOR REPRESENTATION OF CLAIMANTS AT ADMINISTRATIVE PROCEEDINGS.—Section 201(j) (42 U.S.C. 401(j)), section 1631(h) (42 U.S.C. 1383(h)), and section 1817(i) (42 U.S.C. 1395i(i)) are each amended by adding at the end the following new sentence: "The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991. 42 USC 401 note.

SEC. 5107. APPLICABILITY OF ADMINISTRATIVE RES JUDICATA; RELATED NOTICE REQUIREMENTS.

(a) IN GENERAL.—

(1) TITLE II.—Section 205(b) (42 U.S.C. 405(b)) is amended by adding at the end the following new paragraph:

"(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination.".

(2) TITLE XVI.—Section 1631(c)(1) (42 U.S.C. 1383(c)(1)) is amended—

(A) by inserting "(A)" after "(c)(1)"; and

(B) by adding at the end the following:

"(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(ii) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible eligibility to receive payments under this title of choosing to reapply in lieu of requesting review of the determination.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to adverse determinations made on or after July 1, 1991. 42 USC 405 note.

SEC. 5108. DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS. 42 USC 902 note.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to

implement the accountability procedures described in subsection (b) in each of not fewer than 3 telephone service centers operated by the Social Security Administration. Telephone service centers shall be selected for implementation of the accountability procedures so as to permit a thorough evaluation of such procedures as they would operate in conjunction with the service technology most recently employed by the Social Security Administration. Each such demonstration project shall commence not later than 180 days after the date of the enactment of this Act and shall remain in operation for not less than 1 year and not more than 3 years.

(b) ACCOUNTABILITY PROCEDURES.—

(1) IN GENERAL.—During the period of each demonstration project developed and carried out by the Secretary of Health and Human Services with respect to a telephone service center pursuant to subsection (a), the Secretary shall provide for the application at such telephone service center of accountability procedures consisting of the following:

(A) In any case in which a person communicates with the Social Security Administration by telephone at such telephone service center and provides in such communication his or her name, address, and such other identifying information as the Secretary determines necessary and appropriate for purposes of this subparagraph, the Secretary must thereafter promptly provide such person a written receipt which sets forth—

(i) the name of any individual representing the Social Security Administration with whom such person has spoken in such communication,

(ii) the date of the communication;

(iii) a description of the nature of the communication,

(iv) any action that an individual representing the Social Security Administration has indicated in the communication will be taken in response to the communication, and

(v) a description of the information or advice offered in the communication by an individual representing the Social Security Administration.

(B) Such person must be notified during the communication by an individual representing the Social Security Administration that, if adequate identifying information is provided to the Administration, a receipt described in subparagraph (A) will be provided to such person.

(C) A copy of any receipt required to be provided to any person under subparagraph (A) must be—

(i) included in the file maintained by the Social Security Administration relating to such person, or

(ii) if there is no such file, otherwise retained by the Social Security Administration in retrievable form until the end of the 5-year period following the termination of the project.

(2) EXCLUSION OF CERTAIN ROUTINE TELEPHONE COMMUNICATIONS.—The Secretary may exclude from demonstration projects carried out pursuant to this section routine telephone communications which do not relate to potential or current eligibility or entitlement to benefits.

(c) REPORT.—

(1) IN GENERAL [63].—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report on the progress of the demonstration projects conducted pursuant to this section, together with any related data and materials which the Secretary may consider appropriate. The report shall be submitted not later than 90 days after the termination of the project.

(2) SPECIFIC MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall—

(A) assess the costs and benefits of the accountability procedures,

(B) identify any major difficulties encountered in implementing the demonstration project, and

(C) assess the feasibility of implementing the accountability procedures on a national basis.

SEC. 5109. NOTICE REQUIREMENTS.

(a) REQUIREMENTS.—

(1) TITLE II.—Section 205 (42 U.S.C. 405) is amended by inserting after subsection (r) the following new subsection:

"NOTICE REQUIREMENTS

"(s) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(2) TITLE XVI.—Section 1631 (42 U.S.C. 1383) is amended by adding at the end the following:

"NOTICE REQUIREMENTS

"(n) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to notices issued on or after July 1, 1991. 42 USC 405 note.

[63] So in original. Probably should be "GENERAL.—".

42 USC 902 note.

SEC. 5110. TELEPHONE ACCESS TO THE SOCIAL SECURITY ADMINISTRATION.

(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later 180 days after such date.

SEC. 5111. AMENDMENTS RELATING TO SOCIAL SECURITY ACCOUNT STATEMENTS.

(a) IN GENERAL.—Section 1142 (42 U.S.C. 1320b-13), as added by section 10308 of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2485), is amended—

(1) by striking "SEC. 1142." and inserting "SEC. 1143."; and

(2) in subsection (c)(2), by striking " a biennial" and inserting "an annual".

(b) DISCLOSURE OF ADDRESS INFORMATION BY INTERNAL REVENUE SERVICE TO SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 6103(m) of the Internal Revenue Code of 1986 (relating to disclosure of taxpayer identity information) is amended by adding at the end the following new paragraph:

26 USC 6103.

"(7) SOCIAL SECURITY ACCOUNT STATEMENT FURNISHED BY SOCIAL SECURITY ADMINISTRATION.—Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.".

(2) SAFEGUARDS.—Section 6103(p)(4) of such Code (relating to safeguards) is amended, in the matter following subparagraph (f)(iii), by striking "subsection (m)(2), (4), or (6)" and inserting "paragraph (2), (4), (6), or (7) of subsection (m)".

(3) UNAUTHORIZED DISCLOSURE PENALTIES.—Paragraph (2) of section 7213(a) of such Code (relating to unauthorized disclosure of returns and return information) is amended by striking "(m)(2), (4), or (6)" and inserting "(m)(2), (4), (6), or (7)".

SEC. 5112. TRIAL WORK PERIOD DURING ROLLING FIVE-YEAR PERIOD FOR ALL DISABLED BENEFICIARIES.

(a) IN GENERAL.—Section 222(c) (42 U.S.C. 422(c)) is amended—

(1) in paragraph (4)(A), by striking ", beginning on or after the first day of such period," and inserting ", in any period of 60 consecutive months,"; and

(2) by striking paragraph (5).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1992. 42 USC 422 note.

SEC. 5113. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM.

(a) IN GENERAL.—Section 225(b) (42 U.S.C. 425(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in paragraph (2), by striking "Commissioner of Social Security" and inserting "Secretary".

(b) PAYMENTS AND PROCEDURES.—Section 1631(a)(6) (42 U.S.C. 1383(a)(6)) is amended—

(1) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in subparagraph (B), by striking "Commissioner of Social Security" and inserting "Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month. 42 USC 425 note.

SEC. 5114. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS.

(a) IN GENERAL.—Section 228(a)(2) (42 U.S.C. 428(a)(2)) is amended by striking "(B)" and inserting "(B)(i) attained such age after 1967 and before 1972, and (ii)".

42 USC 428 note.

(b) EFFECTIVE DATE—The amendment made by subsection (a) shall apply with respect benefits payable on the basis of applications filed after the date of the enactment of this Act.

SEC. 5115. ELIMINATION OF ADVANCED CREDITING TO THE TRUST FUNDS OF SOCIAL SECURITY PAYROLL TAXES.

(a) IN GENERAL.—Section 201(a) (42 U.S.C. 401(a)) is amended—

(1) in the first sentence following clause (4)—

(A) by striking "monthly on the first day of each calendar month" both places it appears and inserting "from time to time";

(B) by striking "to be paid to or deposited into the Treasury during such month" and inserting "paid to or deposited into the Treasury"; and

(2) in the last sentence, by striking "Fund;" and inserting "Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and".

42 USC 401 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the month following the month in which this Act is enacted.

SEC. 5116. ELIMINATION OF ELIGIBILITY FOR RETROACTIVE BENEFITS FOR CERTAIN INDIVIDUALS ELIGIBLE FOR REDUCED BENEFITS.

(a) IN GENERAL.—Section 202(j)(4) (42 U.S.C. 402(j)(4)) is amended—

(1) in subparagraph (A), by striking "if the effect" and all that follows and inserting "if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q).''; and

(2) in subparagraph (B), by striking clauses (i) and (iv) and by redesignating clauses (ii), (iii), and (v) as clauses (i), (ii), and (iii), respectively.

42 USC 402 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits filed on or after January 1, 1991.

SEC. 5117. CONSOLIDATION OF OLD METHODS OF COMPUTING PRIMARY INSURANCE AMOUNTS.

(a) CONSOLIDATION OF COMPUTATION METHODS.—

(1) IN GENERAL.—Section 215(a)(5) (42 U.S.C. 415(a)(5)) is amended—

(A) by striking "For purposes of" and inserting "(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of";

(B) by striking the last sentence; and

(C) by adding at the end the following new subparagraphs:

"(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the

primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of section 215 as in effect in December 1978, without regard to subsection (b)(4) and (c) of such section as so in effect.

"(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under section 215(b)).

"(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of section 215(a) (as in effect in December 1978) shall be increased to $11.50.

"(iv) In the case of an individual to whom section 215(d) applies, the primary insurance amount of such individual shall be the greater of—

"(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

"(II) the primary insurance amount computed under section 215(d).

"(C) An individual is described in this subparagraph if—

"(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

"(ii) such individual's primary insurance amount computed under this section as in effect immediately before the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 would have been computed under the provisions described in subparagraph (D).

"(D) The provisions described in this subparagraph are—

"(i) the provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

"(ii) the provisions of section 209 as in effect prior to the enactment of the Social Security Act Amendments of 1950, and

"(iii) the provisions of section 215(d) as in effect prior to the enactment of the Social Security Amendments of 1977.

"(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978.".

(2) COMPUTATION OF PRIMARY INSURANCE BENEFIT UNDER 1939 ACT.—

(A) DIVISION OF WAGES BY ELAPSED YEARS.—Section 215(d)(1) (42 U.S.C. 415(d)(1)) is amended—

(i) in subparagraph (A), by inserting "and subject to section 104(j)(2) of the Social Security Amendments of 1972" after "thereof"; and

(ii) by striking "(B) For purposes" in subparagraph (B) and all that follows through clause (ii) of such subparagraph and inserting the following:

"(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)—

"(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

"(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

"(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

"(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.".

(B) CREDITING OF WAGES TO YEARS.—Clause (iii) of section 215(d)(1)(B) (42 U.S.C. 415(d)(1)(B)(iii)) is amended to read as follows:

"(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and".

(C) APPLICABILITY.—Section 215(d) is further amended—

(i) in paragraph (2)(B), by striking "except as provided in paragraph (3),";

(ii) by striking paragraph (2)(C) and inserting the following:

"(C)(i) who becomes entitled to benefits under section 202(a) or 223 or who dies, or

"(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) or under section 231."; and

(iii) by striking paragraphs (3) and (4).

(3) CONFORMING AMENDMENTS.—

(A) Section 215(i)(4) (42 U.S.C. 415(i)(4)) is amended in the first sentence by inserting "and as amended by section 5117

of the Omnibus Budget Reconciliation Act of 1990" after "as then in effect".

(B) Section 203(a)(8) (42 U.S.C. 403(a)(8)) is amended in the first sentence by inserting "and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990," after "December 1978" the second place it appears.

(C) Section 215(c) (42 U.S.C. 415(c)) is amended by striking "This" and inserting "Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this".

(D) Section 215(f)(7) (42 U.S.C. 415(f)(7)) is amended by striking the period at the end of the first sentence and inserting ", including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990".

(E)(i) Section 215(d) (42 U.S.C. 415(d)) is further amended by redesignating paragraph (5) as paragraph (3).

(ii) Subsections (a)(7)(A), (a)(7)(C)(ii), and (f)(9)(A) of section 215 (42 U.S.C. 415) are each amended by striking "subsection (d)(5)" each place it appears and inserting "subsection (d)(3)".

"(iii) Section 215(f)(9)(B) (42 U.S.C. 415(f)(9)(B)) is amended by striking "subsection (a)(7) or (d)(5)" each place it appears and inserting "subsection (a)(7) or (d)(3)".

(4) EFFECTIVE DATE.— 42 USC 403 note.

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted, except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.

(b) BENEFITS IN CASE OF VETERANS.—Section 217(b) (42 U.S.C. 417(b)) is amended—

(1) in the first sentence of paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

(2) by adding at the end the following new paragraph:

"(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 202, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after the month in which the Omnibus Budget Reconciliation Act of 1990 was enacted.

"(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 202 based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.".

(c) APPLICABILITY OF ALTERNATIVE METHOD FOR DETERMINING QUARTERS OF COVERAGE WITH RESPECT TO WAGES IN THE PERIOD FROM 1937 TO 1950.—

(1) APPLICABILITY WITHOUT REGARD TO NUMBER OF ELAPSED YEARS.—Section 213(c) (42 U.S.C. 413(c)) is amended—

(A) by inserting "and 215(d)" after "214(a)"; and

(B) by striking "except where—" and all that follows and inserting the following: "except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.".

42 USC 413 note.

(2) APPLICABILITY WITHOUT REGARD TO DATE OF DEATH.—Section 155(b)(2) of the Social Security Amendments of 1967 is amended by striking "after such date".

42 USC 413 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply only with respect to individuals who—

(A) make application for benefits under section 202 of the Social Security Act after the 18-month period following the month in which this Act is enacted, and

(B) are not entitled to benefits under section 227 or 228 of such Act for the month in which such application is made.

SEC. 5118. SUSPENSION OF DEPENDENT'S BENEFITS WHEN THE WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY.

42 USC 423.

(a) IN GENERAL.—Section 223(e) (42 U.S.C. 623(e)) is amended by—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following new paragraph:

"(2) No benefit shall be payable under section 202 on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) is not payable under paragraph (1).".

42 USC 423 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months after the date of the enactment of this Act.

SEC. 5119. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE.—Section 216(h)(1) (42 U.S.C. 416(h)(1)) is amended—

(1) in subparagraph (A)—

(A) by inserting "(i)" after "(h)(1)(A)"; and

(B) by striking "If such courts" in the second sentence and inserting the following:

"(ii) If such courts"; and

(2) in subparagraph (B)—

(A) by inserting "(i)" after "(B)";

(B) by striking "The provisions of the preceding sentence" in the second sentence and inserting the following:

"(ii) The provisions of clause (i)";

(C) by striking "(i) if another" in the second sentence and all that follows through "or (ii)";

(D) by striking "The entitlement" in the third sentence and inserting the following:

"(iii) The entitlement";

(E) by striking "subsection (b), (c), (e), (f), or (g)" the first place it appears in the third sentence and inserting "subsection (b) or (c)",

(F) by striking "wife, widow, husband, or widower" the first place it appears in the third sentence and inserting "wife or husband";

(G) by striking "(i) in which" in the third sentence and all that follows through "in which such applicant entered" and inserting "in which such person enters";

(H) by striking "For purposes" in the fourth sentence and inserting the following:

"(iv) For purposes";

and

(I) by striking "(i)" and "(ii)" in the fourth sentence and inserting "(I)" and "(II)", respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE.—Section 216(h)(1)(B)(i) (as amended by subsection (a)) is further amended—

(1) by striking "where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual" and inserting "where under subsection (b), (c), (d), (f), or (g) such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual";

(2) by striking "and such applicant" and all that follows through "files the application,";

(3) by striking "subsections (b), (c), (f), and (g)" and inserting "subsections (b), (c), (d), (f), and (g)"; and

(4) by adding at the end the following new sentences: "Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.".

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM.—Section 203(a)(3) (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) In any case in which—

"(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

"(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

"(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.".

(d) CONFORMING AMENDMENT.—Section 203(a)(6) (42 U.S.C. 403(a)(6)) is amended by inserting "(3)(D)," after "(3)(C),".

42 USC 403 note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) APPLICATION REQUIREMENT.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).

42 USC 1310 note.

SEC. 5120. VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Pursuant to section 505 of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services shall develop and carry out under this section demonstration projects in each of not fewer than three States. Each such demonstration project shall be designed to assess the advantages and disadvantages of permitting disabled beneficiaries (as defined in paragraph (3)) to select, from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activity. Each such demonstration project shall commence as soon as practicable after the date of the enactment of this Act and shall remain in operation until the end of fiscal year 1993.

(2) SCOPE AND PARTICIPATION.—Each demonstration project shall be of sufficient scope and open to sufficient participation by disabled beneficiaries so as to permit meaningful determinations under subsection (b).

(3) DISABLED BENEFICIARY.—For purposes of this section, the term "disabled beneficiary" means an individual who is entitled to disability insurance benefits under section 223 of the Social

Security Act or benefits under section 202 of such Act based on such individual's own disability.

(b) MATTERS TO BE DETERMINED.—In the course of each demonstration project conducted under this section, the Secretary shall determine the following:

(1) the extent to which disabled beneficiaries participate in the process of selecting providers of rehabilitation services, and their reasons for participating or not participating;

(2) notable characteristics of participating disabled beneficiaries (including their impairments), classified by the type of provider selected;

(3) the various needs for rehabilitation demonstrated by participating disabled beneficiaries, classified by the type of provider selected;

(4) the extent to which providers of rehabilitation services which are not agencies or instrumentalities of States accept referrals of disabled beneficiaries under procedures in effect under section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for such services and the most effective way of reimbursing such providers in accordance with such provisions;

(5) the extent to which providers participating in the demonstration projects enter into contracts with third parties for services and the types of such services;

(6) whether, and if so the extent to which, disabled beneficiaries who select their own providers of rehabilitation services are more likely to engage in substantial gainful activity and thereby terminate their entitlement under section 202 or 223 of the Social Security Act than those who do not;

(7) the cost effectiveness of permitting disabled beneficiaries to select their providers of vocational rehabilitation services, and the comparative cost effectiveness of different types of providers; and

(8) the feasibility of establishing a permanent national program for allowing disabled beneficiaries to choose their own qualified vocational rehabilitation provider and any additional safeguards which would be necessary to assure the effectiveness of such a program.

(c) PROCEDURAL REQUIREMENTS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select for participation in each demonstration project under this section disabled beneficiaries for whom there is a reasonable likelihood that rehabilitation services provided to them will result in performance by them of substantial gainful activity for a continuous period of nine months prior to termination of the project.

(2) SELECTION OF PROVIDERS OF REHABILITATION SERVICES.—The Secretary shall select qualified rehabilitation agencies to serve as providers of rehabilitation services in the geographic area covered by each demonstration project conducted under this section. The Secretary shall make such selection after consultation with disabled individuals and organizations representing such individuals. With respect to each demonstration project, the Secretary may approve on a case-by-case basis additional qualified rehabilitation agencies from outside the geographic area covered by the project to serve particular disabled beneficiaries.

(3) REIMBURSEMENT OF PROVIDERS.—

(A) Except as provided in subparagraph (B), providers of rehabilitation services under each demonstration project under this section shall be reimbursed in accordance with the procedures in effect under the provisions of section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for services provided under such section.

(B) The Secretary may contract with providers of rehabilitation services under each demonstration project under this section on a fee-for-service basis in order to—

(i) conduct vocational evaluations directed at identifying those disabled beneficiaries who have reasonable potential for engaging in substantial gainful activity and thereby terminating their entitlement to benefits under section 202 or 223 of the Social Security Act if provided with vocational rehabilitation services as participants in the project, and

(ii) develop jointly with each disabled beneficiary so identified an individualized, written rehabilitation program.

(C) Each written rehabilitation program developed pursuant to subparagraph (B)(ii) for any participant shall include among its provisions—

(i) a statement of the participant's rehabilitation goal,

(ii) a statement of the specific rehabilitation services to be provided and of the identity of the provider to furnish such services,

(iii) the projected date for the initiation of such services and their anticipated duration, and

(iv) objective criteria and an evaluation procedure and schedule for determining whether the stated rehabilitation goal is being achieved.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an interim written report on the progress of the demonstration projects conducted under this section not later than April 1, 1992, together with any related data and materials which the Secretary considers appropriate. The Secretary shall submit a final written report to such Committees addressing the matters to be determined under subsection (b) not later than April 1, 1994.

(e) STATE.—For purposes of this section, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(f) CONTINUATION OF DEMONSTRATION AUTHORITY.—Section 505(c) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) is amended to read as follows:

"(c) The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990) no later than October 1, 1993.".

SEC. 5121. EXEMPTION FOR CERTAIN ALIENS, RECEIVING AMNESTY UNDER THE IMMIGRATION AND NATIONALITY ACT, FROM PROSECUTION FOR MISREPORTING OF EARNINGS OR MISUSE OF SOCIAL SECURITY ACCOUNT NUMBERS OR SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 208 (42 U.S.C. 408) is amended by adding at the end the following:

"(d)(1) Except as provided in paragraph (2), an alien—

"(A) whose status is adjusted to that of lawful temporary resident under section 210 or 245A of the Immigration and Nationality Act or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

"(B) whose status is adjusted to that of permanent resident—

"(i) under section 202 of the Immigration Reform and Control Act of 1986, or

"(ii) pursuant to section 249 of the Immigration and Nationality Act, or

"(C) who is granted special immigrant status under section 101(a)(27)(I) of the Immigration and Nationality Act,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) if such conduct is alleged to have occurred prior to 60 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990.

"(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C)) consisting of—

"(A) selling a card that is, or purports to be, a social security card issued by the Secretary,

"(B) possessing a social security card with intent to sell it, or

"(C) counterfeiting a social security card with intent to sell it.

"(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) were not committed.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—So much of section 208 as precedes subsection (d) (as added by subsection (a) of this section) is amended—

(1) in subsection (a), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in subsection (g), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by redesignating subsections (a) through (h) as paragraphs (1) through (8), respectively;

(4) by inserting "(a)" before "Whoever";

(5) by inserting "(b)" at the beginning of the next-to-last undesignated paragraph; and

(6) by inserting "(c)" at the beginning of the last undesignated paragraph.

SEC. 5122. REDUCTION OF AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE APPLICABLE IN DETERMINING SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(1)(C)(ii) (42 U.S.C. 415(a)(1)(C)(ii)) is amended by striking "of not less than 25 percent" the first place it appears and all that follows through "1977) if" and inserting "of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e)) may be

counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e)) could be counted for such year if".

(b) RETENTION OF CURRENT AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE FOR PURPOSES OF WINDFALL ELIMINATION PROVISION.—Section 215(a)(7)(D) (42 U.S.C. 415(a)(7)(D)) is amended—

(1) in the first sentence, by striking "(as defined in paragraph (1)(C)(ii))"; and

(2) by adding at the end (after the table) the following new flush sentence:

"For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.".

SEC. 5123. CHARGING OF EARNINGS OF CORPORATE DIRECTORS.

(a) IN GENERAL.—

(1) Title II is amended by moving the last undesignated paragraph of section 211(a) of such title (as added by section 9022(a) of the Omnibus Budget Reconciliation Act of 1987) to the end of section 203(f)(5) of such title.

42 USC 411, 403.

(2) The undesignated paragraph moved to section 203(f)(5) of the Social Security Act by paragraph (1) is amended—

42 USC 403.

(A) by striking "Any income of an individual which results from or is attributable to" and inserting "(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to",

(B) by striking "the income is actually paid" and inserting "the income, on which the computation of such net earnings from self-employment is based, is actually paid"; and

(C) by striking "unless it was" and inserting "unless such income was".

(3) The last undesignated paragraph of section 1402(a) of the Internal Revenue Code of 1986 (as added by section 9022(b) of the Omnibus Budget Reconciliation Act of 1987) is repealed.

26 USC 1402.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.

42 USC 403 note.

SEC. 5124. COLLECTION OF EMPLOYEE SOCIAL SECURITY AND RAILROAD RETIREMENT TAXES ON TAXABLE GROUP-TERM LIFE INSURANCE PROVIDED TO RETIREES.

(a) SOCIAL SECURITY TAXES.—Section 3102 of the Internal Revenue Code of 1986 (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

26 USC 3102.

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3101 on such payments, and

"(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes wages, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(b) RAILROAD RETIREMENT TAXES.—Section 3202 of such Code (relating to deduction of tax from compensation) is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3201 on such payments, and

"(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes compensation, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage provided after December 31, 1990. 26 USC 3102 note.

SEC. 5125. TIER 1 RAILROAD RETIREMENT TAX RATES EXPLICITLY DETERMINED BY REFERENCE TO SOCIAL SECURITY TAXES.

(a) TAX ON EMPLOYEES.—Subsection (a) of section 3201 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended— 26 USC 3201.

(1) by striking "following" and inserting "applicable", and

(2) by striking "employee:" and all that follows and inserting "employee. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year."

(b) TAX ON EMPLOYEE REPRESENTATIVES.—Paragraph (1) of section 3211(a) of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "representative:" and all that follows and inserting "representative. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year."

(c) TAX ON EMPLOYERS.—Subsection (a) of section 3221 of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "employer:" and all that follows and inserting "employer. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year."

SEC. 5126. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

45 USC 231n note.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "1990" and inserting "1992".

SEC. 5127. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK.—Section 203(b)(2) (42 U.S.C. 403(b)(2)) is amended—

(1) by striking "(2) When" and all that follows through "2 years, the benefit" and inserting the following:

"(2)(A) Except as provided in subparagraph (B), in any case in which—

"(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) for any month, and

"(ii) such person has been divorced for not less than 2 years, the benefit"; and

(2) by adding at the end the following new subparagraph:

"(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.".

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES.—Section 203(d)(1)(B) (42 U.S.C. 403(d)(1)(B)) is amended—

(1) by striking "(B) When" and all that follows through "2 years, the benefit" and inserting the following:

"(B)(i) Except as provided in clause (ii), in any case in which—

"(I) a divorced spouse is entitled to monthly benefits under section 202(b) or (c) for any month, and

"(II) such divorced spouse has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new clause:

"(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.".

42 USC 403 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

SEC. 5128. MODIFICATION OF THE PREEFFECTUATION REVIEW REQUIREMENT APPLICABLE TO DISABILITY INSURANCE CASES.

(a) IN GENERAL.—Section 221(c)(3) (42 U.S.C. 421(c)(3)) is amended to read as follows:

"(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to

this section that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

"(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this title, and

"(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

"(B) In conducting reviews pursuant to subparagraph (A), the Secretary shall, to the extent feasible, select for review those determinations which the Secretary identifies as being the most likely to be incorrect.

"(C) Not later than April 1, 1992, and annually thereafter, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Secretary based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990. 42 USC 421 note.

SEC. 5129. RECOVERY OF OASDI OVERPAYMENTS BY MEANS OF REDUCTION IN TAX REFUNDS.

(a) ADDITIONAL METHOD OF RECOVERY.—Section 204(a)(1)(A) (42 U.S.C. 404(a)(1)(A)) is amended by inserting after "payments to such overpaid person," the following: "or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, United States Code,".

(b) RECOVERY BY MEANS OF REDUCTION IN TAX REFUNDS.—Section 3720A of title 31, United States Code (relating to collection of debts owed to Federal agencies) is amended—

(1) in subsection (a), by striking "OASDI overpayment and";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting the following new subsection after subsection (e):

"(f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

"(2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of an OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

"(B) In any case in which an individual files for a waiver under section 204(b) of the Social Security Act within the 60-day period referred to in subsection (b)(2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based

on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.".

(c) INTERNAL REVENUE CODE PROVISIONS.—

(1) IN GENERAL.—Subsection (d) of section 6402 of the Internal Revenue Code of 1986 (relating to collection of debts owed to Federal agencies) is amended— 26 USC 6402.

(A) in paragraph (1), by striking "any OASDI overpayment and"; and

(B) by striking paragraph (3) and inserting the following new paragraph:

"(3) TREATMENT OF OASDI OVERPAYMENTS.—

"(A) REQUIREMENTS.—Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

"(B) NOTICE; PROTECTION OF OTHER PERSONS FILING JOINT RETURN.—

"(i) NOTICE.—In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

"(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

"(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

"(ii) ADJUSTMENTS BASED ON PROTECTIONS GIVEN TO OTHER TAXPAYERS ON JOINT RETURN.—If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

"(C) DEPOSIT OF AMOUNT OF REDUCTION INTO APPROPRIATE TRUST FUND.—In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Secretary of Health and Human Services, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Secretary of Health and Human Services.

"(D) OASDI OVERPAYMENT.—For purposes of this paragraph, the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act.".

(2) PRESERVATION OF REMEDIES.—Subsection (e) of section 6402 of such Code (relating to review of reductions) is amended in the last sentence by inserting before the period the following: "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act".

(d) EFFECTIVE DATE.—The amendments made by this section— 26 USC 6402 note.
(1) shall take effect January 1, 1991, and
(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) do not apply.

SEC. 5130. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) IN GENERAL.—

(1) AMENDMENT RELATING TO SECTION 7088 OF PUBLIC LAW 100-690.—Section 208 (42 U.S.C. 408) is amended, in the last undesignated paragraph, by striking "section 405(c)(2) of this title" and inserting "section 205(c)(2)".

(2) AMENDMENTS RELATING TO SECTION 322 OF PUBLIC LAW 98-21.—Paragraphs (1) and (2) of section 322(b) of the Social Security Amendments of 1983 (Public Law 98-21, 97 Stat. 121) are each amended by inserting "the first place it appears" before "the following". 42 USC 411; 26 USC 1402.

(3) AMENDMENT RELATING TO SECTION 1011B(b)(4) OF PUBLIC LAW 100-647.—Section 211(a) (42 U.S.C. 411(a)) is amended by redesignating the second paragraph (14) as paragraph (15).

(4) AMENDMENT RELATING TO SECTION 2003(d) OF PUBLIC LAW 100-647.—Paragraph (3) of section 3509(d) of the Internal Revenue Code of 1986 (as amended by section 2003(d) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647; 102 Stat. 3598)) is further amended by striking "subsection (d)(4)" and inserting "subsection (d)(3)". 26 USC 3509.

(5) AMENDMENT RELATING TO SECTION 10208 OF PUBLIC LAW 101-239.—Section 209(a)(7)(B) (42 U.S.C. 409(a)(7)(B)) is amended by striking "subparagraph (B)" in the matter following clause (ii) and inserting "clause (ii)".

(b) EFFECTIVE DATES.—The amendments made by subsection (a) shall be effective as if included in the enactment of the provision to which it relates. 26 USC 1402 note.

TITLE VI—ENERGY AND ENVIRONMENTAL PROGRAMS

Subtitle A—Abandoned Mine Reclamation

Abandoned Mine Reclamation Act of 1990. 30 USC 1201 note.

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the "Abandoned Mine Reclamation Act of 1990".

SEC. 6002. ABANDONED MINE RECLAMATION FUND.

(a) SOURCES OF DEPOSITS.—Section 401(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(b)) is amended as follows:

(1) Amend paragraph (1) to read as follows:

"(1) the reclamation fees levied under section 402;".

(2) Strike "and" at the end of paragraph (3); strike the period at the end of paragraph (4) and insert "; and"; and add the following new paragraph at the end:

"(5) interest credited to the fund under subsection (e).".

(b) USE OF MONEY.—Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended as follows:

(1) In paragraph (1), strike "402(g)(2)" and insert "402(g)(1)".

(2) Amend paragraph (2) to read as follows:

"(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 406;".

(3) In paragraph (6), strike "by contract" and insert "conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986" after "projects".

(4) Strike "and" at the end of paragraph (9).

(5) Strike paragraph (10) and insert the following:

"(10) for use under section 411;

"(11) for the purpose of section 507(c), except that not more than $10,000,000 shall annually be available for such purpose; and

"(12) all other necessary expenses to accomplish the purposes of this title.".

(c) INTEREST.—Section 401 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by adding the following new subsection at the end:

"(e) INTEREST.—The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for the needs of such fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund.".

SEC. 6003. RECLAMATION FEES.

(a) DUE DATE.—Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "fifteen years after the date of enactment of this Act unless extended by an Act of Congress" and inserting "September 30, 1995".

(b) STATEMENT.—Section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(c)) is amended by adding the following at the end thereof: "Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple,[64] or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 506 and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.".

[64] So in original. Probably should be "tipple".

(c) AUDITS.—Section 402(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(d)) is amended by inserting "(1)" after "(d)" and by adding the following at the end thereof:

"(2) The Secretary shall conduct such audits of coal production and the payment of fees under this title as may be necessary to ensure full compliance with the provisions of this title. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this title. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this title.".

(d) NOTICE.—Section 402(f) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(f)) is amended by adding the following at the end thereof: "Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of the Internal Revenue Code of 1986.".

SEC. 6004. ALLOCATION OF FUNDS.

Section 402(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)) is amended to read as follows:

"(g) ALLOCATION OF FUNDS.—(1) Moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this title as follows:

"(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

"(i) An approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible pursuant to section 404 (in the case of a State not certified under section 411(a)) or pursuant to section 411(b) (in the case of a State certified under section 411(a)).

"(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

"(i) an approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible pursuant to section 404 (in the case of an Indian tribe not certified under section 411(a)) or pursuant to section 411(b) (in the case of a tribe certified under section 411(a)).

"(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

"(D) To the extent not expended within 3 years after the date of any grant award under this paragraph, such grant shall be available for expenditure by the Secretary in any area under paragraph (2), (3), (4), or (5).

"(2) 20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 401(e) and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 401(c)(2).

"(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraphs (2) and (5) are authorized to be expended by the Secretary for any of the following:

"(A) For the purpose of section 507(c), either directly or through grants to the States, subject to the limitation contained in section 401(c)(11).

"(B) For the purpose of section 410 (relating to emergencies).

"(C) For the purpose of meeting the objectives of the fund set forth in section 403(a) for eligible lands and waters pursuant to section 404 in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405.

"(D) For the administration of this title by the Secretary.

"(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

"(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

"(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date of enactment of this paragraph, and that the surety of such mining operator became insolvent during such period, and as of the date of enactment of this paragraph, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 403(a). The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

"(D) Amounts collected from the assessment of civil penalties under section 518 are authorized to be appropriated to carry out this paragraph.

"(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 404 under the priorities stated in paragraphs (1) and (2) of section 403(a).

"(F) For the purposes of the certification referred to in section 411(a), sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 403(a) for eligible lands and waters pursuant to section 404. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 411(a).

"(5) The Secretary shall allocate 40 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 411(a) to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

"(6) Any State may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 10 percent of the total of the grants made annually to such State under paragraphs (1) and (5) if such amounts are deposited into either—

"(A) a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) after September 30, 1995, or

"(B) an acid mine drainage abatement and treatment fund established under State law as provided in paragraph (7).

"(7)(A) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

"(B) The plan shall include, but shall not be limited to, each of the following:

"(i) An identification of the qualified hydrologic unit.

"(ii) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

"(iii) An identification of the sources of acid mine drainage within the hydrologic unit.

"(iv) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

"(v) The cost of undertaking the proposed abatement and treatment measures.

"(vi) An identification of existing and proposed sources of funding for such measures.

"(vii) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

"(C) The Secretary may approve any plan under this paragraph only after determining that such plan meets the requirements of this paragraph. In conducting an analysis of the items referred to in clauses (iv), (v), and (vii) the Director of the Office of Surface Mining shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Secretary shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under section 406.

"(D) For purposes of this paragraph, the term 'qualified hydrologic unit' means a hydrologic unit—

"(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

"(ii) which contains lands and waters which are—

"(I) eligible pursuant to section 404 and include any of the priorities stated in paragraph (1), (2), or (3) of section 403(a); and

"(II) proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage.

"(8) Of the funds available for expenditure under this subsection in any fiscal year, the Secretary shall allocate annually not less than $2,000,000 for expenditure in each State, and for each Indian tribe, having an approved abandoned mine reclamation program pursuant to section 405 and eligible lands and waters pursuant to section 404 so long as an allocation of funds to such State or such tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a).".

SEC. 6005. FUND OBJECTIVES.

Section 403 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233) is amended as follows:

(1) Insert "(a) PRIORITIES.—" after "SEC. 403.".

(2) Insert ", except as provided for under section 411," after "title".

(3) Add at the end the following new subsections:

"(b) UTILITIES AND OTHER FACILITIES.—(1) Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing,

constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

"(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, section 404 shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977.

"(c) INVENTORY.—For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 405, and assisting in making the certification referred to in section 411(a), the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 405 may offer amendments to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this title shall be so noted on the inventory under standardized procedures established by the Secretary.".

SEC. 6006. ELIGIBLE LANDS AND WATERS.

Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1234) is amended by inserting ", except as provided for under section 411" after "processes", and by adding the following at the end thereof: "For other provisions relating to lands and waters eligible for such expenditures, see section 402(g)(4), section 403(b)(1), and section 409.".

SEC. 6007. STATE RECLAMATION PROGRAMS.

Section 405 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235) is amended by adding the following at the end thereof:

"(1) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.".

SEC. 6008. CLARIFICATION.

Section 406(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(d)) is amended by striking "experimental".

SEC. 6009. VOIDS AND TUNNELS.

Section 409 of the the [65] Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239) is amended—

(1) in subsection (a) by striking "chairman of any tribe" and inserting in lieu thereof "the governing body of an Indian tribe";

(2) in subsection (b), by striking "or Indian reservations under the provisions of subsection 402(g)" and inserting "or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g)"; and

(3) by amending subsection (c) to read as follows:

"(c)(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 403(a)(1), except that for the purposes of this section the reference to coal in section 403(a)(1) shall not apply.

"(2) The provisions of section 404 shall apply to this section, with the exception that such mined lands need not have been mined for coal.

"(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 411(a).".

SEC. 6010. CERTIFICATION.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.) is amended as follows:

30 USC 1241-1243.

(1) Redesignate sections 411, 412, and 413 as sections 412, 413, and 414, respectively.

(2) Insert after section 410 the following new section:

30 USC 1240a.

"SEC. 411. CERTIFICATION.

"(a) CERTIFICATION OF COMPLETION OF COAL RECLAMATION.—The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 405 may certify to the Secretary that all of the priorities stated in section 403(a) for eligible lands and waters pursuant to section 404 have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

"(b) ELIGIBLE LANDS, WATERS, AND FACILITIES.—If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands and waters for annual grants under section 402(g)(1), section 404 shall not apply, and eligible lands, waters, and facilities shall be those—

"(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

"(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

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[65] So in original. Probably should be "of the Surface".

"(c) PRIORITIES.—Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 403):

"(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

"(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

"(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

"(d) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

"(e) UTILITIES AND OTHER FACILITIES.—Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

"(f) Notwithstanding subsection (e), where the Secretary has concurred in the certification referenced in subsection (a) and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 402(g)(1) to carry out such activities or construction.

"(g) APPLICATION OF OTHER PROVISIONS.—The provisions of sections 407 and 408 shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 407 and 408 shall not apply.".

SEC. 6011. SMALL OPERATOR ASSISTANCE.

Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(c)) is amended by striking "100,000" and inserting "300,000".

SEC. 6012. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) is amended as follows:

(1) Redesignate the items relating to sections 411, 412, and 413 as items 412, 413, and 414, respectively.

(2) Insert after the item relating to section 410 the following:

"Sec. 411. Certification.".

(b) REFERENCE.—Section 712 (b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1302(b)) is amended to read as follows:

"(b) For the implementation and funding of section 507(c), see the provisions of section 401(c)(11).".

(c) REPEAL.—Section 406(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(i)) is repealed.

(d) TECHNICAL CORRECTIONS.—The following provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended as follows:

30 USC 1235. (1) Section 405(a) is amended by striking out "perparation" and inserting "preparation".

(2) Section 405(h) is amended by striking out "Upon approved" and inserting "Upon approval".

30 USC 1236. (3) Section 406(a) is amended by striking out "including owners" and inserting "(including owners".

30 USC 1237. (4) Section 407(a)(4) is amended by striking out the period and inserting a semicolon.

(5) Section 407(a) is amended by striking out "Then" and inserting "then".

(6) Section 407(e) is amended by striking out "paragraph (1), of this subsection" and inserting "paragraph (1) of subsection (c)".

(7) Section 407(g)(2) is amended by striking out "the use of" and inserting "the use or".

30 USC 1231 note.

SEC. 6013. SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to affect the certifications made by the State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle that such State has completed the reclamation of eligible abandoned coal mine lands.

30 USC 1231 note.

SEC. 6014. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the beginning of the first fiscal year immediately following the fiscal year in which this subtitle is enacted.

Subtitle B—NRC User Fees and Annual Charges

42 USC 2214.

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) shall be made not later than September 30, 1995.

(b) FEES FOR SERVICE OR THING OF VALUE.—Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover

the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES.—

(1) PERSONS SUBJECT TO CHARGE.—Any licensee of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES.—The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

(3) AMOUNT PER LICENSEE.—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall 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.

(d) DEFINITION.—As used in this section, the term "Nuclear Waste Fund" means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) CONFORMING AMENDMENT TO COBRA.—Paragraph (1)(A) of section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking "except that for fiscal year 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990" and inserting "except as otherwise provided by law". 42 USC 2213.

Subtitle C—Amendments to Coastal Zone Management Act of 1972

Coastal Zone Act Reauthorization Amendments of 1990.

SEC. 6201. SHORT TITLE. 16 USC 1451 note.

This subtitle may be cited as the "Coastal Zone Act Reauthorization Amendments of 1990".

SEC. 6202. FINDINGS AND PURPOSE OF THIS SUBTITLE. 16 USC 1451 note.

(a) FINDINGS.—Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of man-made gases, released into the atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in significant global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(9) All coastal States should have coastal zone management programs in place that conform to the Coastal Zone Management Act of 1972, as amended by this Act.

(b) PURPOSE.—It is the purpose of Congress in this subtitle to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

SEC. 6203. FINDINGS AND POLICY OF COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) FINDINGS.—(1) Section 302(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(d)) is amended by inserting "habitat areas of the" immediately before "coastal zone".

(2) Section 302(f) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(f)) is amended by inserting "exclusive economic zone," immediately after "territorial sea,".

(3) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) is amended by adding at the end the following new subsections:

"(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

"(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

"(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.".

(b) POLICY.—(1) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended by striking "as well as the needs for" and inserting in lieu thereof "as well as the needs for compatible".

(2) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking "of subsidence" and inserting in lieu thereof the following: "likely to be affected by or vulnerable to sea level rise, land subsidence,".

(3) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraph (1), is amended—

(A) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively; and

(B) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,".

(4) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraphs (1) and (3), is further amended—

(A) by striking "and" at the end of subparagraph (I), as so redesignated by paragraph (3);

(B) by striking the semicolon in subparagraph (J), as so redesignated by paragraph (3), and inserting in lieu thereof a comma; and

(C) by adding at the end the following new subparagraph:

"(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and".

(5) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting "including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes," immediately after "hazardous areas,".

(6) Section 303 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452) is amended by striking "and" at the end of paragraph (3); by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon; and by adding at the end the following new paragraphs:

"(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and

international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

"(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.".

SEC. 6204. DEFINITIONS.

(a) COASTAL ZONE.—The third sentence of section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended—

(1) by inserting ", and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise" immediately before the period at the end; and

(2) by striking "the United States territorial sea." and inserting in lieu thereof "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, [66] as applicable.".

(b) ENFORCEABLE POLICY.—Section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) is amended by inserting after paragraph (6) the following' [67]

"(6a) [68] The term 'enforceable policy' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.".

(c) WATER USE.—Section 304(18) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(18)) is amended by striking all after "means" and inserting in lieu thereof "a use, activity, or project conducted in or on waters within the coastal zone.".

SEC. 6205. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454) is amended to read as follows:

"MANAGEMENT PROGRAM DEVELOPMENT GRANTS

"SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily

[66] So in original. Probably should be "1705),".
[67] So in original. Probably should be "following:".
[68] So in original. Probably should be "(6)(a)".

developing its management program. No coastal State is eligible to receive more than two grants pursuant to this subsection.

"(b) Any coastal State which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.".

SEC. 6206. ADMINISTRATIVE GRANTS.

(a) IN GENERAL.—Section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) is amended to read as follows:

"ADMINISTRATIVE GRANTS

"SEC. 306. (a) The Secretary may make grants to any coastal State for the purpose of administering that State's management program, if the State matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

"(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

"(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

"(b) The Secretary may make a grant to a coastal State under subsection (a) only if the Secretary finds that the management program of the coastal State meets all applicable requirements of this title and has been approved in accordance with subsection (d);

"(c) Grants under this section shall be allocated to coastal States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal States, maximum and minimum grants for any fiscal year to promote equity between coastal States and effective coastal management.

"(d) Before approving a management program submitted by a coastal State, the Secretary shall find the following:

"(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

"(2) The management program includes each of the following required program elements:

"(A) An identification of the boundaries of the coastal zone subject to the management program.

"(B) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

"(C) An inventory and designation of areas of particular concern within the coastal zone.

"(D) An identification of the means by which the State proposes to exert control over the land uses and water uses

referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

"(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

"(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

"(G) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

"(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

"(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

"(3) The State has—

"(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

"(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

"(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

"(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that—

"(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

"(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

"(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government—

"(I) shall consider the comments;

"(II) may, in its discretion, hold a public hearing on the comments; and

"(III) may not take any action within the 30-day period to implement the management program decision.

"(4) The State has held public hearings in the development of the management program.

"(5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

"(6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

"(7) The State is organized to implement the management program.

"(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

"(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

"(10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

"(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

"(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

"(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

"(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

"(B) Direct State land and water use planning and regulation.

"(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

"(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

"(13) The management program provides for—

"(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

"(B) specific and enforceable standards to protect such resources.

"(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

"(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

"(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

"(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

"(1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.

"(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal State that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

"(3)(A) Except as provided in subparagraph (B), a coastal State may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

"(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307.".

42 USC 1455 note.

(b) ADDITIONAL PROGRAM REQUIREMENTS.—Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972, as amended by this subtitle

(including a State which submitted a program before the date of enactment of this Act), shall demonstrate to the Secretary—

(1) that the program complies with section 306(d)(14) and (15) of that Act, by not later than 3 years after the date of the enactment of this Act; and

(2) that the program complies with section 306(d)(16) of that Act, by not later than 30 months after the date of publication of final guidance under section 6217(g) of this Act.

SEC. 6207. RESOURCE MANAGEMENT IMPROVEMENT GRANTS.

Section 306A(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by adding before the period at the end the following: ", or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts".

SEC. 6208. COASTAL ZONE MANAGEMENT CONSISTENCY.

(a) FEDERAL AGENCY ACTIVITIES.—Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

"(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

"(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.".

(b) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 307(c)(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(2)) is amended by inserting "the enforceable policies of" before "approved State management programs".

(2) Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) is amended in the first sentence—

(A) by inserting ", in or outside of the coastal zone," after "to conduct an activity";

(B) by striking "land or water uses in" and inserting "any land or water use or natural resource of"; and

(C) by inserting "the enforceable policies of" after the words "the proposed activity complies with".

(3) Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) is amended in the first sentence—

(A) by striking "land use or water use in" and inserting "land or water use or natural resource of"; and

(B) by inserting "the enforceable policies of" after "such plan complies".

(4) Section 307(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(d)) is amended—

(A) by striking "affecting" and inserting ", in or outside of the coastal zone, affecting any land or water use of natural resource of"; and

(B) by inserting "the enforceable policies of" after "that are inconsistent with".

(c) FEDERAL FEE.—Section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended by adding at the end the following:

"(i) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee. The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).".

SEC. 6209. COASTAL ZONE MANAGEMENT FUND.

Section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended to read as follows:

"COASTAL ZONE MANAGEMENT FUND

16 USC 1456a.

"SEC. 308. (a)(1) The obligations of any coastal State or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, and any repayment schedule established pursuant to this Act as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal State or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

"(A) Modify the terms and conditions of such loan.

"(B) Refinance the loan.

"(C) Recommend to the Congress that legislation be enacted to forgive the loan.

"(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

"(b)(1) The Secretary shall establish and maintain a fund, to be known as the 'Coastal Zone Management Fund' (hereinafter in this section referred to as the 'Fund'), which shall consist of amounts retained and deposited into the Fund under subsection (a).

"(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

"(A) Expenses incident to the administration of this title, in an amount not to exceed—

"(i) $5,000,000 for fiscal year 1991;

"(ii) $5,225,000 for fiscal year 1992;

"(iii) $5,460,125 for fiscal year 1993;

"(iv) $5,705,830 for fiscal year 1994; and

"(v) $5,962,593 for fiscal year 1995.

"(B) After use under subparagraph (A)—

"(i) projects to address management issues which are regional in scope, including interstate projects;

"(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

"(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

"(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314;

"(v) program development grants as authorized by section 305; and

"(vi) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

"(3) On December 1 of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.".

SEC. 6210. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452b) is amended to read as follows:

"COASTAL ZONE ENHANCEMENT GRANTS

"SEC. 309. (a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives: 16 USC 1456b.

"(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

"(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

"(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to

coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

"(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

"(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

"(6) Preparing and implementing special area management plans for important coastal areas.

"(7) Planning for the use of ocean resources.

"(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

"(b) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

"(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

"(d) Within 12 months following the date of enactment of this section, and consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

"(1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

"(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

"(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

"(e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

"(f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

"(g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.".

SEC. 6211. TECHNICAL ASSISTANCE.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 309 the following new section:

"TECHNICAL ASSISTANCE

"SEC. 310. (a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection. 16 USC 1456c.

"(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

"(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

"(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.".

SEC. 6212. COASTAL ZONE MANAGEMENT REVIEW.

(a) PUBLIC PARTICIPATION.—Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

"(b) In evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.".

(b) INTERIM SANCTIONS.—Subsection (c) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(c)) is amended to read as follows:

"(c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

"(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with—

"(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

"(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

"(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.".

(c) FINAL SANCTIONS.—Section 312(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(d)) is amended to read as follows:

"(d) The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).".

(d) REPEAL.—Subsection (f) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is repealed.

SEC. 6213. COASTAL ZONE MANAGEMENT AWARDS.

The Coastal Zone Management Act of 1972 is amended by inserting after section 313 the following:

"WALTER B. JONES EXCELLENCE IN COASTAL ZONE MANAGEMENT AWARDS

16 USC 1460.

"SEC. 313. (a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308, implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

"(b) The Secretary shall elect annually—

"(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

"(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this title; and

"(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

"(c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

"(d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

"(e) Using sums in the Coastal Zone Management Fund established under section 308, the Secretary shall establish and execute appropriate awards, to be known as the 'Walter B. Jones Awards', including—

"(1) cash awards in an amount not to exceed $5,000 each;

"(2) research grants; and

"(3) public ceremonies to acknowledge such awards.".

SEC. 6214. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) AMENDMENT TO SECTION HEADING.—The heading for section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) is amended by striking "RESERVE RESEARCH" and inserting in lieu thereof "RESEARCH RESERVE".

(b) GRANTS FOR ACQUISTION OF LANDS AND WATERS.—Section 315(e)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(A)) is amended by striking "per centum" and inserting in lieu thereof "percent", and by striking "$4,000,000" and inserting in lieu thereof "$5,000,000".

(c) GRANTS FOR OPERATIONS AND EDUCATION.—Section 315(e)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(B)) is amended—

(1) by striking "50 per centum" and inserting in lieu thereof "70 percent"; and

(2) by inserting immediately before the period at the end the following: "; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System".

(d) CLERICAL AMENDMENT.—Section 315(e)(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)) is amended by striking "of subsection (e)" each place it appears.

SEC. 6215. AUTHORIZATION OF APPROPRIATIONS.

Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C 1464) is amended by striking all after "Secretary—" and inserting in lieu thereof the following:

"(1) such sums, not to exceed $750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

"(2) such sums, not to exceed $42,000,000 for the fiscal year ending September 30, 1991, $48,890,000 for the fiscal year ending September 30, 1992, $58,870,000 for the fiscal year ending September 30, 1993, $67,930,000 for the fiscal year ending September 30, 1994, and $90,090,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

"(3) such sums, not to exceed $6,000,000 for the fiscal year ending September 30, 1991, $6,270,000 for the fiscal year ending September 30, 1992, $6,552,000 for the fiscal year ending September 30, 1993, $6,847,000 for the fiscal year ending

September 30, 1994, and $7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

"(4) such sums, not to exceed $10,000,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed $5,000,000 in any such fiscal year.".

SEC. 6216. CONFORMING AMENDMENTS.

(a) Section 306a(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by striking "306(c)(9)" and inserting in lieu thereof "306(d)(9)".

(b) Section 312(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(a)) is amended by striking "through (I)" and inserting in lieu thereof "through (K)".

16 USC 1455b.

SEC. 6217. PROTECTING COASTAL WATERS.

(a) IN GENERAL.—

(1) PROGRAM DEVELOPMENT.—Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) PROGRAM COORDINATION.—A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

(b) PROGRAM CONTENTS.—Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) IDENTIFYING CRITICAL COASTAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) MANAGEMENT MEASURES.—The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) TECHNICAL ASSISTANCE.—The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMETATION.—

(1) REVIEW AND APPROVAL.—Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) IMPLEMENTATION OF APPROVED PROGRAM.—If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through—

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

(3) WITHHOLDING COASTAL MANAGEMENT ASSISTANCE.—If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) WITHHOLDING WATER POLLUTION CONTROL ASSISTANCE.—If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) TECHNICAL ASSISTANCE.—The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal

States and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) INLAND COASTAL ZONE BOUNDARIES.—

(1) REVIEW.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) RECOMMENDATION.—If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) AMOUNT.—The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) STATE SHARE.—The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) ALLOCATION.—Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972, except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) GUIDANCE FOR COASTAL NONPOINT SOURCE POLLUTION CONTROL.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) CONTENT.—Guidance under this subsection shall include, at a minimum—

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls

and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) PUBLICATION.—The Administrator, in consultation with the Secretary, shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) NOTICE AND COMMENT.—The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) MANAGEMENT MEASURES.—For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) ADMINISTRATOR.—There is authorized to be appropriated to the Administrator for use for carrying out this section not more than $1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) SECRETARY.—(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972, as amended by this Act, not more than $1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

(i) $6,000,000 for fiscal year 1992;

(ii) $12,000,000 for fiscal year 1993;

(iii) $12,000,000 for fiscal year 1994; and

(iv) $12,000,000 for fiscal year 1995.

(i) DEFINITIONS.—In this section—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms "coastal waters", and "coastal zone" has the meaning that term has in the Coastal Management Act of 1972;

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

(5) the term "land use" includes a use of waters adjacent to coastal waters; and

(6) the term "Secretary" means the Secretary of Commerce.

Subtitle D—Extension of Superfund for 3 Years

SEC. 6301. 3-YEAR EXTENSION OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended—

(1) by inserting after "Reauthorization Act of 1986," in subsection (a) the following: "and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994,";

(2) by striking "5-fiscal-year period" in subsection (c)(11) and inserting "8-fiscal year period";

(3) by striking "and 1991" in subsection (c)(12) and inserting "1991, 1992, 1993, and 1994";

(4) by striking "1990 and 1991" in subsection (m) and inserting "1990, 1991, 1992, 1993, and 1994";

(5) by striking "and 1991" in subsection (n)(1) and inserting "1991, 1992, 1993, and 1994";

(6) by striking subsection (n)(2)(E) and inserting the following new subparagraph:

"(E) For each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.";

(7) by striking "and 1991" in subsection (n)(3) and inserting "1991, 1992, 1993, and 1994"; and

(8) by inserting after subparagraph (E) of subsection (p)(1) the following new subparagraphs:

"(F) For fiscal year 1992, $212,500,000.

"(G) For fiscal year 1993, $212,500,000.

"(H) For fiscal year 1994, $212,500,000.".

Subtitle E—Shale Oil Contract Modification

SEC. 6401. SHALE OIL CONTRACT MODIFICATION.

Section 7404(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by adding at the end the following sentence: "The Secretary of the Treasury shall have the authority to negotiate and execute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 and subsequently transferred to the Secretary

42 USC 8791 note.

of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: *Provided, however,* That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: *And provided further,* That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.".

Subtitle F—Environmental Protection Agency Fees

42 USC 4370c.

SEC. 6501. ENVIRONMENTAL PROTECTION AGENCY FEES.

(a) ASSESSMENT AND COLLECTION.—The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

(b) AMOUNT OF FEES AND CHARGES.—Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than $28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than $38,000,000.

(c) LIMITATION ON FEES AND CHARGES.—(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant ot [69] the Federal Water Pollution Control Act is $10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of the date of enactment of this Act pursuant to sections 26(b) and 305(e)(2) of the Toxic Substances Control Act, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

(d) RULE OF CONSTRUCTION.—Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to the Independent Office Appropriations Act (31 U.S.C. 9701).

(e) USES OF FEES.—Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and

[69] So in original. Probably should be "to".

charges are collected. Such funds shall remain available until expended.

SEC. 6601. SHORT TITLE.

Pollution Prevention Act of 1990.
42 USC 13101 note.

This subtitle may be cited as the "Pollution Prevention Act of 1990".

SEC. 6602. FINDINGS AND POLICY.

42 USC 13101.

(a) FINDINGS.—The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multi-media management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this subtitle.

(b) POLICY.—The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

SEC. 6603. DEFINITIONS.

42 USC 13102.

For purposes of this subtitle—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 313(c) of the Superfund Amendments and Reauthorization Act of 1986.

(4) The term "release" has the same meaning as provided by section 329(8) of the Superfund Amendments and Reauthorization Act of 1986.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

42 USC 13103.

SEC. 6604. EPA ACTIVITIES.

(a) AUTHORITIES.—The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this subtitle. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multimedia approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) FUNCTIONS.—The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this subtitle to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to

businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this subtitle, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8) establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

SEC. 6605. GRANTS TO STATES FOR STATE TECHNICAL ASSISTANCE PROGRAMS. 42 USC 13104.

(a) GENERAL AUTHORITY.—The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) CRITERIA.—When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) MATCHING FUNDS.—Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) EFFECTIVENESS.—The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) INFORMATION.—States receiving grants under this section shall make information generated under the grants available to the Administrator.

42 USC 13105.

SEC. 6606. SOURCE REDUCTION CLEARINGHOUSE.

(a) AUTHORITY.—The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 6605 on the operation and success of State source reduction programs.

(b) PUBLIC AVAILABILITY.—The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this subtitle and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

42 USC 13106.

SEC. 6607. SOURCE REDUCTION AND RECYCLING DATA COLLECTION.

(a) REPORTING REQUIREMENTS.—Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA") for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceeding [70] calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this subtitle.

(b) ITEMS INCLUDED IN REPORT.—The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless

[70] So in original. Probably should be "preceding".

the Administrator finds other categories to be more appropriate:

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processess during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA PROVISIONS.—The provisions of sections 322, 325(c), and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include the additional information required under this section.

(d) ADDITIONAL OPTIONAL INFORMATION.—Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) AVAILABILITY OF DATA.—Subject to section 322 of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly

available in the same manner as the data collected under section 313 of the Superfund Amendments and Reauthorization Act of 1986.

42 USC 13107.

SEC. 6608. EPA REPORT.

(a) BIENNIAL REPORTS.—The Administrator shall provide Congress with a report within eighteen months after enactment of this subtitle and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 4(b) and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this subtitle in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) SUBSEQUENT REPORTS.—Each biennial report submitted under subsection (a) after the first report shall contain each of the following:

(1) An analysis of the data collected under section 6607 on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 6607 for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and nonregulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multi-media source reduction [71]

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

[71] So in original. Probably should be "reduction.".

SEC. 6609. SAVINGS PROVISIONS. 42 USC 13108.

(a) Nothing in this subtitle shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986.

(b) Nothing contained in this subtitle shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

SEC. 6610. AUTHORIZATION OF APPROPRIATIONS. 42 USC 13109.

There is authorized to be appropriated to the Administrator $8,000,000 for each of the fiscal years 1991, 1992 and 1993 for functions carried out under this subtitle (other than State Grants), and $8,000,000 for each of the fiscal years 1991, 1992 and 1993, for grant programs to States issued pursuant to section 6605.

TITLE VII—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

Subtitle A—Civil Service

SEC. 7001. ELIMINATION OF LUMP-SUM RETIREMENT BENEFIT.

(a) LUMP-SUM BENEFIT.—(1) Sections 8343a and 8420a of title 5, United States Code, are each amended by adding at the end the following:

"(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—

"(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), 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.".

5 USC 8343a note.

(2) Section 4005 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2135) is amended—

(A) in subsection (a), by striking "October 1, 1990." and inserting "December 2, 1990."; and

(B) by adding at the end the following:

"(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

"(1) paragraph (2)(A) thereof; or

"(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990.".

5 USC 8343a note.

(C)(i) Section 6001(b)(2) of the Omnibus Budget Reconciliation Act of 1987 (5 U.S.C. 8343a note) and section 4005(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2135) are each amended by striking "described in paragraph (1)." and inserting "on which the payment described in paragraph (1) is paid.".

5 USC 8343a note.

(ii) The amendments made by clause (i) shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act.

5 USC 8343a note.

(D) Section 2 of Public Law 101-227 (103 Stat. 1943) is repealed.

(3) Section 8348(a)(1)(B) of title 5, United States Code, is amended by inserting "in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law)," before "and in withholding".

5 USC 8343a note.

(4)(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to "December 1, 1990" shall be deemed to read "December 1, 1991".

(B) This paragraph applies with respect to any individual who—

(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672, 673, 673b, 674, 675, or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.

(b) PRIOR REFUNDS.—(1) Section 8334(d) of title 5, United States Code, is amended—

(A) by striking "(d)" and inserting "(d)(1)"; and

(B) by adding at the end the following:

"(2)(A) This paragraph applies with respect to any employee or Member who—

"(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

"(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

"(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

"(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)-(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

"(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.".

(2)(A) Section 8334 of title 5, United States Code, is amended in paragraphs (1) and (2) of subsection (e), and in subsection (h), by striking "(d)," and inserting "(d)(1),".

(B) Section 8334(f) and section 8339(i)(1) of title 5, United States Code, are amended by striking "(d)" and inserting "(d)(1)".

(C) Section 8339(e) of title 5, United States Code, is amended by striking "8334(d)" and inserting "8334(d)(1)".

(D) The second sentence of section 8342(a) of title 5, United States Code, is amended by inserting "or 8334(d)(2)" after "8343a".

(3) The amendments made by this subsection shall be effective with respect to any annuity having a commencement date later than December 1, 1990. 5 USC 8334 note.

SEC. 7002. REFORMS IN THE HEALTH BENEFITS PROGRAM.

(a) HOSPITALIZATION-COST-CONTAINMENT MEASURES.—Section 8902 of title 5, United States Code, is amended by adding at the end the following:

"(n) A contract for a plan described by section 8903 (1), (2). or (3), or section 8903a, shall require the carrier—

"(1) to implement hospitalization-cost-containment measures, such as measures—

"(A) for verifying the medical necessity of any proposed treatment or surgery;

"(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

"(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

"(D) involving case management, if the circumstances so warrant; and

"(2) to establish incentives to encourage compliance with measures under paragraph (1).".

(b) IMPROVED CASH MANAGEMENT.—Section 8909(a) of title 5, United States Code, is amended by adding at the end (as a flush left sentence) the following:

"Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).".

(c) EXEMPTION FROM STATE PREMIUM TAXES.—Section 8909 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

"(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.".

(d) IMPROVED COORDINATION WITH MEDICARE.—Section 8910 of title 5, United States Code, is amended by adding at the end the following:

"(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.".

(e) AMENDMENTS TO PUBLIC LAW 101-76.—Public Law 101-76 (103 Stat. 556) is amended— 5 USC 8906 note.

(1) in subsection (a)(1), by striking "contract year 1990 or 1991," and inserting "each of contract years 1990 through 1993 (inclusive),"; and

(2) in subsection (c), by striking "contract year 1991," and inserting "a contract year (or any period thereafter),".

(f) APPLICATION OF CERTAIN MEDICARE LIMITS TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER.—(1) Section 8904 of title 5, United States Code, is amended by inserting "(a)" before the first sentence and by adding at the end of the section the following new subsection:

"(b)(1) 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 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.

"(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

"(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

"(B) For purposes of this paragraph, the term 'Medicare program information' includes 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).".

(2) The amendments made by this subsection shall apply with respect to contract years beginning on or after January 1, 1992. 5 USC 8904 note.

(g) EFFECTIVE DATE.—Except as provided in subsection (f), the amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1991. 5 USC 8902 note.

Subtitle B—Postal Service

SEC. 7101. FUNDING OF COLAS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.

(a) EXPANDED SCOPE OF COVERAGE; CHANGE IN PRORATION RULE.—Section 8348(m)(1) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) REPEAL OF PROVISION RELATING TO CERTAIN EARLIER COLAS.—Section 4002(b) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2134) is repealed. 5 USC 8348 note.

(c) PROVISION RELATING TO PRE-1991 COLAS.—(1) For the purpose of this subsection— 5 USC 8348 note.

(A) the term "pre-1991 COLA" means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)–(N) of paragraph (3);

(B) the term "post-1990 fiscal year" means a fiscal year after fiscal year 1990; and

(C) the term "pre-1991 fiscal year" means a fiscal year before fiscal year 1991.

(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect, subject to section 7104.

(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to—

(A) $6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

(B) $7,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1978;

(C) $10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

(D) $20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

(E) $26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

(F) $28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

(G) $30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

(H) $5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

(I) $19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

(J) $7,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1986;

(K) $8,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(L) $36,800,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

(M) $51,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

(N) $63,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 1990. 5 USC 8348 note.

SEC. 7102. FUNDING OF HEALTH BENEFITS FOR POSTAL SERVICE RETIREES AND SURVIVORS OF POSTAL SERVICE EMPLOYEES OR RETIREES.

(a) EXPANDED SCOPE OF COVERAGE.—Section 8906(g)(2) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) CONTRIBUTIONS TO BE PRORATED.—Section 8906(g)(2) of title 5, United States Code, as amended by subsection (a), is further amended—

(1) by striking "(2)" and inserting "(2)(A)"; and

(2) by adding at the end the following:

"(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date. 5 USC 8906 note.

SEC. 7103. PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987. 5 USC 8348 note.

(a) DEFINITION.—For the purpose of this section, the term "pre-1987 fiscal year" means a fiscal year before fiscal year 1987.

(b) FOR PAST RETIREMENT COLAs.—As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 7101) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund—

(1) $216,000,000, not later than September 30, 1991;

(2) $266,000,000, not later than September 30, 1992;

(3) $316,000,000, not later than September 30, 1993;

(4) $416,000,000, not later than September 30, 1994; and

(5) $471,000,000, not later than September 30, 1995.

(c) FOR PAST HEALTH BENEFITS.—As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 7102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund—

(1) $56,000,000, not later than September 30, 1991;

(2) $47,000,000, not later than September 30, 1992;

(3) $62,000,000, not later than September 30, 1993;

(4) $56,000,000, not later than September 30, 1994; and

(5) $234,000,000, not later than September 30, 1995.

Subtitle C—Miscellaneous

Computer Matching and Privacy Protection Amendments of 1990.
5 USC 552a note.

SEC. 7201. COMPUTER MATCHING OF FEDERAL BENEFITS INFORMATION AND PRIVACY PROTECTION.

(a) SHORT TITLE.—This section may be cited as the "Computer Matching and Privacy Protection Amendments of 1990".

(b) VERIFICATION REQUIREMENTS AMENDMENT.—(1) Subsection (p) of section 552a of title 5, United States Code, is amended to read as follows:

"(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

"(A)(i) the agency has independently verified the information; or

"(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

"(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

"(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

"(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

"(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

"(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

"(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

"(A) the amount of any asset or income involved;

"(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

"(C) the period or periods when the individual actually had such asset or income.

"(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.".

5 USC 552a note.

(2) Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall

publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act. 5 USC 552a note.

(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT.—Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2, shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of—

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under section 2(b).

SEC. 7202. PORTABILITY OF BENEFITS FOR EMPLOYEES CONVERTING TO THE CIVIL SERVICE SYSTEM.

Portability of Benefits for Nonappropriated Fund Employees Act of 1990. 5 USC 2101 note.

(a) SHORT TITLE.—This section may be cited as the "Portability of Benefits for Nonappropriated Fund Employees Act of 1990".

(b) DEFINITIONAL AMENDMENT.—Section 2105(c) of title 5, United States Code, is amended—

(1) by amending paragraph (1) to read as follows:

"(1) laws administered by the Office of Personnel Management, except—

"(A) section 7204;

"(B) as otherwise specifically provided in this title;

"(C) the Fair Labor Standards Act of 1938; or

"(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or"; and

(2) in paragraph (2), by striking "chapter 84" and inserting "chapter 84 (except to the extent specifically provided therein)".

(c) AMENDMENT RELATING TO ORDER OF RETENTION.—Section 3502(a)(C) of title 5, United States Code, is amended to read as follows:

"(C) is entitled to credit for—

"(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(d) AMENDMENT RELATING TO PAY ON A CHANGE OF POSITION.—Section 5334 of title 5, United States Code, is amended by adding at the end the following:

"(g) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such

employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c). In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.".

(e) AMENDMENT RELATING TO PERIODIC STEP INCREASES.—Section 5335 of title 5, United States Code, is amended by adding at the end the following:

"(g) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.".

(f) AMENDMENT RELATING TO GRADE AND PAY RETENTION.—Section 5365(b) of title 5, United States Code, is amended by adding at the end, as a flush left sentence, the following:

"Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(g) AMENDMENT RELATING TO PAY FOR ACCUMULATED AND ACCRUED LEAVE.—Section 5551(a) of title 5, United States Code, is amended by adding at the end the following new sentence: "For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).".

(h) AMENDMENTS RELATING TO TRANSFERS BETWEEN POSITIONS UNDER DIFFERENT LEAVE SYSTEMS.—Section 6308 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The annual"; and

(2) by adding at the end the following:

"(b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively,

described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.".

(i) AMENDMENTS TO INCLUDE ADDITIONAL SERVICE FOR LEAVE ACCRUAL PURPOSES.—(1) Section 6312 is amended to read as follows:

"§ 6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees

"(a) Credit shall be given in determining years of service for the purpose of section 6303(a) for—

"(1) service as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or an association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(2) service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) by an employee who has moved without a break in service of more than 3 days to a position subject to this subchapter in the Department of Defense or the Coast Guard, respectively.

"(b) The provisions of subsections (a) and (b) of section 6308 for transfer of leave between leave systems shall apply to the leave systems established for such county office employees and employees of such Department of Defense and Coast Guard nonappropriated fund instrumentalities, respectively.".

(2) The item relating to section 6312 in the table of sections for chapter 63 of title 5, United States Code, is amended to read as follows:

"6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees.".

(j) AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (1)(J);

(B) by inserting "and" after the semicolon at the end of paragraph (1)(K);

(C) by inserting after paragraph (1)(K) the following:

"(L) an employee described in section 2105(c) who has made an election under section 8347(p)(1) to remain covered under this subchapter;";

(D) in paragraph (1)(ii), by striking the matter following "Government employees" through the semicolon and inserting "(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c));"; and

(E) in paragraph (7), by striking "and Gallaudet College;" and inserting "Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8347 of title 5, United States Code, is amended by adding at the end the following:

"(p)(1) Under regulations prescribed by the Office of Personnel Management, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this subchapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c); and

"(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.".

(k) AMENDMENTS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—(1) Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (11)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by inserting "and" after the semicolon at the end of subparagraph (B);

(iii) by inserting after subparagraph (B) the following:

"(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;";

(iv) by striking "or" at the end of clause (ii);

(v) by inserting "or" after the semicolon at the end of clause (iii); and

(vi) by inserting after clause (iii) the following:

"(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);"; and

(B) in paragraph (15), by striking "and Gallaudet College;" and inserting ", Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated

fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8461 of title 5, United States Code, is amended by adding at the end the following:

"(n)(1) Under regulations prescribed by the Office, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this chapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described by section 2105(c); and

"(D) is not eligible to make an election under section 8347(p),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described by section 2105(c) rather than be subject to this chapter.".

(l) AMENDMENTS RELATING TO HEALTH BENEFITS.—Section 8901(3)(A) of title 5, United States Code, is amended—

(1) by striking "or" at the end of clause (ii);

(2) by inserting "or" after the semicolon at the end of clause (iii); and

(3) by inserting after clause (iii) the following:

"(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(p)(2) or 8461(n)(2) to remain subject to such a system;".

(m) APPLICABILITY.—(1) The amendments made by this section shall apply with respect to any individual who, on or after January 1, 1987— 5 USC 2105 note.

(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act, receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section shall complete such election within 180 days after the date of enactment of this Act.

5 USC 2105 note.

(n) CLARIFYING PROVISIONS RELATING TO TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM.—(1) For the purpose of this section, the term "nonappropriated fund instrumentality" means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

(2)(A) If an individual makes an election under section 8347(p)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8347(p)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(4) If an individual makes an election under section 8347(p)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retire-

ment system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.

Subtitle D—Coordination

SEC. 7301. COORDINATION. 5 USC 2101 note.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, this title and the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE VIII—VETERANS' PROGRAMS

TABLE OF CONTENTS

Subtitle A—Compensation, DIC, and Pension

SEC. 8001. LIMITATION ON COMPENSATION BENEFITS FOR CERTAIN INCOMPETENT VETERANS.

(a) IN GENERAL.—(1) Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3205. Limitation on compensation payments for certain incompetent veterans

"(a) In any case in which a veteran having neither spouse, child, nor dependent parent is rated by the Secretary in accordance with regulations as being incompetent and the value of the veteran's estate (excluding the value of the veteran's home) exceeds $25,000, further payment of compensation to which the veteran would otherwise be entitled may not be made until the value of such estate is reduced to less than $10,000.

"(b)(1) Subject to paragraph (2) of this subsection, if a veteran denied payment of compensation pursuant to subsection (a) is subsequently rated as being competent, the Secretary shall pay to the veteran a lump sum equal to the total of the compensation which was denied the veteran pursuant to such paragraph. The Secretary shall make the lump-sum payment as soon as practicable after the end of the 90-day period beginning on the date of the competency rating.

"(2) A lump-sum payment may not be made under paragraph (1) to a veteran who, within such 90-day period, dies or is again rated by the Secretary as being incompetent.

"(3) The costs of administering this subsection shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(c) This section expires on September 30, 1992.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3205. Limitation on compensation payments for certain incompetent veterans."

38 USC 3205 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to payment of compensation for months after October 1990.

SEC. 8002. ELIMINATION OF PRESUMPTION OF TOTAL DISABILITY IN DETERMINATION OF PENSION FOR CERTAIN VETERANS.

(a) ELIMINATION OF PRESUMPTION.—That portion of subsection (a) of section 502 of title 38, United States Code, preceding paragraph (1) is amended to read as follows:

"(a) For the purposes of this chapter, a person shall be considered to be permanently and totally disabled if such a person is unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person, or is suffering from—".

38 USC 502 note.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to claims filed after October 31, 1990.

SEC. 8003. REDUCTION IN PENSION FOR CERTAIN VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) IN GENERAL.—Section 3203 of title 38, United States Code, is amended by adding at the end the following:

"(f)(1) For the purposes of this subsection—

"(A) the term 'Medicaid plan' means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

"(B) the term 'nursing facility' means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r).

"(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of $90 per month shall be paid to or for

the veteran for any period after the month of admission to such nursing facility.

"(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

"(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

"(5) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(6) This subsection expires on September 30, 1992.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 1, 1990, or the date of the enactment of this Act, whichever is later. 38 USC 3203 note.

SEC. 8004. INELIGIBILITY OF REMARRIED SURVIVING SPOUSES OR MARRIED CHILDREN FOR REINSTATEMENT OF BENEFITS ELIGIBILITY UPON BECOMING SINGLE.

(a) IN GENERAL.—Section 103 of title 38, United States Code, is amended—

(1) in subsection (d)—

(A) by striking out "(1)"; and

(B) by striking out paragraphs (2) and (3); and

(2) in subsection (e)—

(A) by striking out "(1)"; and

(B) by striking out paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to claims filed after October 31, 1990, and shall not operate to reduce or terminate benefits to any individual whose benefits were predicated on section 103(d)(2), 103(d)(3), or 103(e)(2) before the effective date of those amendments. 38 USC 103 note.

SEC. 8005. COST-OF-LIVING INCREASES IN COMPENSATION RATES. 38 USC 301 note.

(a) POLICY REGARDING FISCAL YEAR 1991.—The fiscal year 1991 cost-of-living adjustments in the rates of compensation payable under chapter 11 of title 38, United States Code, and of the dependency and indemnity compensation payable under chapter 13 of such title will be no more than a 5.4 percent increase, with all increased monthly rates rounded down to the next lower dollar. The effective date for such adjustments will not be earlier than January 1, 1991.

(b) INCREASE PAYABLE AS OF JANUARY 1992.—The amount of compensation or dependency and indemnity compensation payable to any individual for the month of January 1992 who is entitled to such benefits as of January 1, 1992, shall be increased for such month by the amount equal to the amount of the monthly increase provided for that individual's benefit level as of January 1, 1991, pursuant to the adjustments described in subsection (a).

Subtitle B—Health-Care Benefits

SEC. 8011. MEDICAL-CARE COST RECOVERY.

(a) APPLICABILITY.—Section 629(a)(2) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of clause (C);

(2) by striking out the period at the end of clause (D) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new clause:

"(E) for which care and services are furnished before October 1, 1993, under this chapter to a veteran who—

"(i) has a service-connected disability; and

"(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.".

(b) MAXIMUM AMOUNT RECOVERABLE.—Clause (B) of section 629(c)(2) of such title is amended by striking out "in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with" and inserting in lieu thereof "if provided by".

(c) ESTABLISHMENT OF MEDICAL-CARE COST RECOVERY FUND.—Section 629(g) of such title is amended to read as follows:

"(g)(1) There is established in the Treasury a fund to be known as the Department of Veterans Affairs Medical-Care Cost Recovery Fund (hereafter referred to in this section as the 'Fund').

"(2) Amounts recovered or collected under this section shall be deposited in the Fund.

"(3) Sums in the Fund shall be available to the Secretary for the following:

"(A) Payment of necessary expenses for the identification, billing, and collection of the cost of care and services furnished under this chapter, and for the administration and collection of payments required under section 610(f) of this title for hospital care or nursing home care, under section 612(f) of this title for medical services, and under section 622A of this title for medications, including—

"(i) the costs of computer hardware and software, word processing and telecommunications equipment, other equipment, supplies, and furniture;

"(ii) personnel training and travel costs;

"(iii) personnel and administrative costs for attorneys in the Office of General Counsel of the Department and for support personnel of such office;

"(iv) other personnel and administrative costs; and

"(v) the costs of any contract for identification, billing, or collection services.

"(B) Payment of the Secretary for reasonable charges, as determined by the Secretary, imposed for (i) services and utilities (including light, water, and heat) furnished by the Secretary, (ii) recovery and collection activities under this section, and (iii) administration of the Fund.

"(4) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in

which the deposit is made, the expenses, payments, and costs described in paragraph (3).".

(d) TRANSFER TO FUND.— 38 USC 629 note.

(1) AMOUNT TO BE TRANSFERRED.—The Secretary of the Treasury shall transfer $25,000,000 from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the Department of Veterans Affairs Medical-Care Cost Recovery Fund established by section 629(g) of title 38, United States Code (as amended by subsection (c)). The amount so transferred shall be available until the end of September 30, 1991, for the support of the equivalent of 800 full-time employees and other expenses described in paragraph (3) of such section.

(2) REIMBURSEMENT OF LOAN GUARANTY REVOLVING FUND.—Notwithstanding section 629(g) of title 38, United States Code (as amended by subsection (c)), the first $25,000,000 recovered or collected by the Department of Veterans Affairs during fiscal year 1991 as a result of third-party medical recovery activities shall be credited to the Department of Veterans Affairs Loan Guaranty Revolving Fund.

(3) THIRD-PARTY MEDICAL RECOVERY ACTIVITIES DEFINED.—For the purposes of this subsection, the term "third-party medical recovery activities" means recovery and collection activities carried out under section 629 of title 38, United States Code.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 1, 1990. 38 USC 629 note.

SEC. 8012. COPAYMENT FOR MEDICATIONS.

(a) COPAYMENT REQUIRED.—(1) Subchapter III of chapter 17 of title 38, United States Code, is amended by inserting after section 622 the following new section:

"§ 622A. Copayment for medications

"(a)(1) Subject to paragraph (2), the Secretary shall require a veteran (other than a veteran with a service-connected disability rated 50 percent or more) to pay the United States $2 for each 30-day supply of medication furnished such veteran under this chapter on an outpatient basis for the treatment of a non-service-connected disability or condition. If the amount supplied is less than a 30-day supply, the amount of the charge may not be reduced.

"(2) The Secretary may not require a veteran to pay an amount in excess of the cost to the Secretary for medication described in paragraph (1).

"(b) Amounts collected under this section shall be deposited in the Department of Veterans Affairs Medical-Care Cost Recovery Fund.

"(c) The provisions of subsection (a) expire on September 30, 1991.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 622 the following new item:

"622A. Copayment for medications.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to medication furnished to a veteran after October 31, 1990, or the date of the enactment of this Act, whichever is later. 38 USC 622A note.

SEC. 8013. MODIFICATION OF HEALTH-CARE CATEGORIES AND COPAYMENTS.

(a) INPATIENT CARE.—(1) Subsection (a) of section 610 of title 38, United States Code, is amended—

(A) in paragraph (1)(I), by striking out "622(a)(1)" and inserting in lieu thereof "622(a)"; and

(B) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) In the case of a veteran who is not described in paragraph (1) of this subsection, the Secretary may, to the extent resources and facilities are available, furnish hospital care and nursing home care to a veteran which the Secretary determines is needed for a nonservice-connected disability, subject to the provisions of subsection (f) of this section.".

(2) Subsection (f) of such section is amended—

(A) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(f)(1) The Secretary may not furnish hospital care or nursing home care under this section to a veteran who is eligible for such care under subsection (a)(2) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) of this subsection.

"(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

"(A) the lesser of—

"(i) the cost of furnishing such care, as determined by the Secretary; or

"(ii) the amount determined under paragraph (3) of this subsection; and

"(B) an amount equal to $10 for every day the veteran receives hospital care and $5 for every day the veteran receives nursing home care."; and

(B) in subparagraphs (A) and (B) of paragraph (3), by striking out "(2)(B)" each place it appears and inserting in lieu thereof "(2)(A)(ii)".

(b) OUTPATIENT CARE.—Subsection (f) of section 612 of such title is amended—

(1) in paragraph (1), by striking out "610(a)(2)(B)" and inserting in lieu thereof "610(a)(2)";

(2) by redesignating paragraphs (5) and (7) as (3) and (4), respectively; and

(3) by striking paragraphs (3), (4), and (6).

(c) INCOME THRESHOLDS.—(1) Subsection (a) of section 622 of such title is amended—

(A) in paragraph (1)—

(i) by striking out "(1)" at the beginning of the subsection;

(ii) by redesignating clauses (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(iii) by striking out "Category A threshold" in paragraph (3), as so redesignated, and inserting in lieu thereof "amount set forth in subsection (b)";

(B) by striking out paragraph (2).

(2) Subsection (b) of such section is amended to read as follows:

"(b)(1) For purposes of subsection (a)(3), the income threshold for the calendar year beginning on January 1, 1990, is—

"(A) $17,240 in the case of a veteran with no dependents; and

"(B) $20,688 in the case of a veteran with one dependent, plus $1,150 for each additional dependent.

"(2) For a calendar year beginning after December 31, 1990, the amounts in effect for purposes of this subsection shall be the amounts in effect for the preceding calendar year as adjusted under subsection (c) of this section.".

(3) Subsection (c) of such section is amended by striking out "paragraphs (1) and (2) of".

(4) Paragraph (2) of subsection (d) of such section is amended to read as follows:

"(2) A determination described in this paragraph is a determination that for purposes of subsection (a)(3) of this section a veteran's attributable income is not greater than the amount determined under subsection (b) of this section.".

(5) Subsection (e) of such section is amended—

(A) in paragraph (1), by striking out "the Category A threshold or the Category B threshold, as appropriate" and inserting in lieu thereof "the amount determined under subsection (b) of this section"; and

(B) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) A veteran is described in this paragraph for the purposes of subsection (a) of this section if—

"(A) the veteran has an attributable income greater than the amount determined under subsection (b) of this section; and

"(B) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below the amount determined under subsection (b).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to hospital care and medical services received after October 31, 1990, or the date of the enactment of this Act, whichever is later. 38 USC 610 note.

(e) SUNSET.—The amendments made by this section expire on September 30, 1991. 38 USC 610 note.

Subtitle C—Education and Employment

SEC. 8021. LIMITATION OF REHABILITATION PROGRAM ENTITLEMENT TO SERVICE-DISABLED VETERANS RATED AT 20 PERCENT OR MORE.

(a) IN GENERAL.—Section 1502(1) of title 38, United States Code, is amended by inserting "at a rate of 20 percent or more" after "compensable" both places it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to veterans and other persons originally applying for assistance under chapter 31 of title 38, United States Code, on or after November 1, 1990. 38 USC 1502 note.

Subtitle D—Housing and Loan Guaranty Assistance

SEC. 8031. ELECTION OF CLAIM UNDER GUARANTY OF MANUFACTURED HOME LOANS.

(a) IN GENERAL.—Paragraph (3) of section 1812(c) of title 38, United States Code, is amended to read as follows:

"(3)(A) The Secretary's guaranty may not exceed the lesser of (i) the lesser of $20,000 or 40 percent of the loan, or (ii) the maximum amount of the guaranty entitlement available to the veteran as specified in paragraph (4) of this subsection.

"(B) A claim under the Secretary's guaranty shall, at the election of the holder of a loan, be made by the filing of an accounting with the Secretary—

"(i) within a reasonable time after the receipt by such holder of an appraisal by the Secretary of the value of the security for the loan; or

"(ii) after liquidation of the security for the loan.

"(C) If the holder of a loan applies for payment of a claim under clause (i) of subparagraph (B) of this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the amount of the appraisal referred to in such clause; or

"(ii) the amount equal to the guaranty under this section.

"(D) If the holder of a loan files for payment of a claim under clause (ii) of subparagraph (B) this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the greater of the value of the property securing the loan, as determined by the Secretary, or the amount of the liquidation or resale proceeds; or

"(ii) the amount equal to the guaranty under this section.

"(E) In any accounting filed pursuant to subparagraph (B)(ii) of this subsection, the Secretary shall permit to be included therein accrued unpaid interest from the date of the first uncured default to such cutoff date as the Secretary may establish, and the Secretary shall allow the holder of the loan to charge against the liquidation or resale proceeds accrued interest from the cutoff date established to such further date as the Secretary may determine and such costs and expenses as the Secretary determines to be reasonable and proper.

"(F) The liability of the United States under the guaranty provided for by this paragraph shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.".

38 USC 1812 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to claims filed with the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

SEC. 8032. LOAN FEE.

Section 1829(a) of title 38, United States Code, is amended—

(1) in paragraph (2), by striking out "The amount" and inserting in lieu thereof "Except as provided in paragraph (6) of this subsection, the amount"; and

(2) by adding at the end the following:

"(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.".

Subtitle E—Burial and Grave Marker Benefits

SEC. 8041. HEADSTONE OR MARKER ALLOWANCE.

(a) IN GENERAL.—Section 906 of title 38, United States Code, is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—This section shall apply to deaths occurring on or after November 1, 1990. 38 USC 906 note.

SEC. 8042. PLOT ALLOWANCE ELIGIBILITY.

(a) IN GENERAL.—Section 903(b)(2) of title 38, United States Code, is amended by inserting "(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)" after "(2) if such veteran".

(b) EFFECTIVE DATE.—This section shall apply to deaths occurring on or after November 1, 1990. 38 USC 903 note.

Subtitle F—Miscellaneous

SEC. 8051. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) DISCLOSURE OF TAX INFORMATION.—(1) Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended— 26 USC 6103.

(A) by striking out "and" at the end of clause (vi);

(B) by striking out the period at the end of clause (vii) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following:

"(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of such title; and

"(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

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, 1992."

(2) The heading of paragraph (7) of section 6103(l) of such Code is amended by striking out "OR THE FOOD STAMP ACT OF 1977" and inserting in lieu thereof ", THE FOOD STAMP ACT OF 1977, OR TITLE 38, UNITED STATES CODE".

(b) USE OF INCOME INFORMATION FOR NEEDS-BASED PROGRAMS.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Use of income information from other agencies: notice and verification

"(a) The Secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. The Secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

"(b) The Secretary may not, by reason of information obtained from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

"(1) The amount of the asset or income involved.

"(2) Whether such individual actually has (or had) access to such asset or income for the individual's own use.

"(3) The period or periods when the individual actually had such asset or income.

"(c) The benefits and services described in this subsection are the following:

"(1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.

"(2) Parents' dependency and indemnity compensation provided under section 415 of this title.

"(3) Health-care services furnished under sections 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of this title.

"(4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

"(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

"(e) The Secretary shall inform the individual of the findings made by the Secretary on the basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

"(f) The Secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

"(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, 1992.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3117. Use of income information from other agencies: notice and verification.".

(c) NOTICE TO CURRENT BENEFICIARIES.—(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the enactment of this Act) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 (as added by subsection (a)). 38 USC 3117 note.

(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.

(d) GAO STUDY.—The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992. 38 USC 3117 note.

SEC. 8052. LINE OF DUTY.

(a) ELIMINATION OF COMPENSATION IN CERTAIN CASES.—Title 38, United States Code, is amended—

(1) in section 105(a), by striking out "the result of the person's own willful misconduct" in the first sentence and inserting in lieu thereof "a result of the person's own willful misconduct or abuse of alcohol or drugs";

(2) in section 310, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs"; and

(3) in section 331, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to claims filed after October 31, 1990. 38 USC 105 note.

SEC. 8053. REQUIREMENT FOR CLAIMANTS TO REPORT SOCIAL SECURITY NUMBERS; USES OF DEATH INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) MANDATORY REPORTING OF SOCIAL SECURITY NUMBERS.—Section 3001 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) Any person who applies for or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

"(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number.

"(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.".

(b) REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES DEATH INFORMATION TO IDENTIFY DECEASED RECIPIENTS OF COMPENSATION AND PENSION BENEFITS.—(1) Chapter 53 of title 38, United States Code, as amended by section 8051(b), is further amended by adding at the end the following new section:

"§ 3118. Review of Department of Health and Human Services death information

"(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Department of Health and Human Services relating to persons who have died for the purposes of—

"(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

"(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

"(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

"(b) The Department of Health and Human Services death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Secretary of Health and Human Services, including death information available to the Secretary of Health and Human Services from a State, pursuant to a memorandum of understanding entered into by such Secretaries. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.".

(2) The table of sections at the beginning of such chapter, as amended by section 8051(b), is further amended by adding at the end the following:

"3118. Review of Department of Health and Human Services death information.".

TITLE IX—TRANSPORTATION

Subtitle A—Surface Transportation

SEC. 9001. SENSE OF CONGRESS THAT HIGHWAY USER TAXES SHOULD BE DEDICATED TO THE HIGHWAY TRUST FUND.

(a) FINDINGS.—Congress finds that—

(1) highway motor fuel taxes have in the past been dedicated to the Highway Trust Fund and used for the development of the surface transportation system;

(2) extraordinary budget pressures have led to consideration of the need for a temporary, 5-year highway motor fuels tax for deficit reduction;

(3) any portion of the new taxes deposited into the Highway Trust Fund shall be available to accommodate our country's vital transportation needs;

(4) adequate funding of transportation is a key component of a national strategy for economic growth; and

(5) use of the highway motor fuels taxes for deficit reduction should be temporary so that we can return as soon as possible to the dedicated user fee principle in order to ensure fairness to highway users and to ensure that needed transportation infrastructure improvements are made.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) any increase in motor fuel excise taxes that are deposited in the Highway Trust Fund shall be available for surface transportation purposes;

(2) the Budget Resolutions for fiscal years 1991 through 1995 should accommodate the Nation's transportation needs and the section 302(a) allocations should provide budget authority and outlays attributable to the increase in deposits into the Highway Trust Fund as a result of any increases in motor fuels taxes through implementation of this Act;

(3) Congress reaffirms the principle that highway motor fuel taxes should be deposited in the Highway Trust Fund; and

(4) to the extent the highway motor fuel taxes are used for deficit reduction during the 5-year period beginning with fiscal year 1991, the Congress should return to the dedicated user fee principle as soon as possible but no later than the end of fiscal year 1995.

Subtitle B—Aviation Safety and Capacity Expansion

Aviation Safety and Capacity Expansion Act of 1990.

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the "Aviation Safety and Capacity Expansion Act of 1990". 49 USC app. 2201 note.

(b) TABLE OF CONTENTS.—

SEC. 9102. CONSTRUCTION OF FIREFIGHTING TRAINING FACILITIES.

Section 503(a)(2) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2202(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) any acquisition of land for, or work involved to construct, a burn area training structure on or off the airport for the purpose of providing live fire drill training for aircraft rescue and firefighting personnel required to receive such training by a regulation of the Department of Transportation, including basic equipment and minimum structures to support such training in accordance with standards of the Federal Aviation Administration.".

SEC. 9103. DECLARATION OF POLICY.

Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is amended—

(1) in paragraph (5) by inserting ", including as they may be applied between category and class of aircraft" after "discriminatory practices"; and

(2) in paragraph (13) by inserting "and should not unjustly discriminate between categories and classes of aircraft" after "attempted".

SEC. 9104. AIRPORT IMPROVEMENT PROGRAM.

Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) is amended—

(1) in subsection (a) by striking " '13,816,700,000" and inserting [72] '$13,916,700,000"; and

(2) in subsection (b) by striking "September 30, 1987" and inserting "September 30, 1992".

SEC. 9105. AIRWAY IMPROVEMENT PROGRAM.

(a) RENAMING OF AIRWAY PLAN.—Section 504(b)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2203(b)(1)) is amended by inserting after the second sentence the following new sentence: "For fiscal year 1991 and thereafter, the revised plan shall be known as the 'Airway Capital Investment Plan'.".

(b) AIRWAY FACILITIES AND EQUIPMENT.—The first sentence of section 506(a)(1) of such Act (49 U.S.C. App. 2205(a)(1)) is amended by striking "September 30, 1981," and all that follows through the period and inserting the following: "September 30, 1990, aggregate amounts not to exceed $2,500,000,000 for fiscal year 1991 and $5,500,000,000 for the fiscal years ending before October 1, 1992.".

SEC. 9106. FAA OPERATIONS.

Section 106 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated for operations of the Administration $4,088,000,000 for fiscal year 1991 and $4,412,600,000 for fiscal year 1992.".

SEC. 9107. OPERATION AND MAINTENANCE OF AVIATION SYSTEM.

(a) ELIMINATION OF PENALTY.—Section 506(c)(3)(B)(i) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(c)(3)(B)(i)) is amended—

(1) by inserting "and" after "1989"; and

(2) by striking "$3,770,000,000" and all that follows through "1992,".

(b) FUNDING.—Section 506(c) of such Act (49 U.S.C. App. 2205(c)) is amended by adding at the end the following new paragraph:

"(4) FISCAL YEARS 1991-1992.—The amount appropriated from the Trust Fund for the purposes of clauses (A) and (B) of paragraph (1) of this subsection for each of fiscal years 1991 and 1992 may not exceed—

"(A) 75 percent of the amount of funds made available under section 505, subsections (a) and (b) of this section, and section 106(k) of title 49, United States Code, for such fiscal year; less

"(B) the amount of funds made available under section 505 and subsections (a) and (b) of this section for such fiscal year.".

SEC. 9108. WEATHER SERVICE.

The second sentence of section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended—

(1) by striking "and" the first place it appears and inserting a comma; and

(2) by inserting before the period the following: ", $34,521,000 for fiscal year 1991, and $35,389,000 for fiscal year 1992".

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[72] So in original. Probably should be " "$13,916,700,000"; and".

SEC. 9109. MILITARY AIRPORT PROGRAM.

(a) DECLARATION OF POLICY.—Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is further amended—

(1) by striking "and" at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting "; and"; and

(3) by adding at the end the following:

"(14) special emphasis should be placed on the conversion of appropriate former military air bases to civil use and on the identification and improvement of additional joint-use facilities.".

49 USC app. 2207.

(b) SET-ASIDE.—Section 508(d) of such Act (49 U.S.C. App. 2204(d)) is amended by striking paragraph (5) and inserting the following:

"(5) MILITARY AIRPORT SET-ASIDE.—Not less than 1.5 percent of the funds made available under section 505 in each of fiscal years 1991 and 1992 shall be distributed during such fiscal year to sponsors of current or former military airports designated by the Secretary under subsection (f) for the purpose of developing current and former military airports to improve the capacity of the national air transportation system.

"(6) REALLOCATION.—If the Secretary determines that he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), (4), or (5) of this subsection for any fiscal year because the number of qualified applications submitted in compliance with this title is insufficient to meet such amount, the portion of such amount the Secretary determines will not be distributed shall be available for obligation during such fiscal year for other airports and for other purposes authorized by section 505 of this title.".

49 USC app. 2207.

(c) DESIGNATION OF FORMER MILITARY AIRPORTS.—Section 508 of such Act is further amended by adding at the end the following new subsection:

"(f) DESIGNATION OF CURRENT OR FORMER MILITARY AIRPORTS.—

"(1) DESIGNATION.—The Secretary shall designate not more than 8 current or former military airports for participation in the grant program established under subsection (d)(5) and this subsection. At least 2 such airports shall be designated within 6 months after the date of the enactment of this subsection and the remaining airports shall be designated for participation no later than September 30, 1992.

"(2) SURVEY.—The Secretary shall conduct a survey of current and former military airports to identify which ones have the greatest potential to improve the capacity of the national air transportation system. The survey shall also identify the capital development needs of such airports in order to make them part of the national air transportation system and shall identify which capital development needs are eligible for grants under section 505. The survey shall be completed by September 30, 1991.

"(3) LIMITATION.—In selecting airports for participation in the program established under subsection (d)(5) and this subsection and in conducting the survey under paragraph (2), the Secretary shall consider only those current or former military airports whose conversion in whole or in part to civilian commercial or reliever airport as part of the national air transportation

system would enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

"(4) PERIOD OF ELIGIBILITY.—An airport designated by the Secretary under this subsection shall remain eligible to participate in the program under subsection (d)(5) and this subsection for the 5 fiscal years following such designation. An airport that does not attain a level of enplaned passengers during such 5 fiscal year period which qualifies it as a small hub airport as defined as of January 1, 1990, or reliever airport may be redesignated by the Secretary for participation in the program for such additional fiscal years as may be determined by the Secretary.

"(5) ADDITIONAL FUNDING.—Notwithstanding the provisions of section 513(b), not to exceed $5,000,000 per airport of the sums to be distributed at the discretion of the Secretary under section 507(c) for any fiscal year may be used by the sponsor of a current or former military airport designated by the Secretary under this subsection for construction, improvement, or repair of terminal building facilities, including terminal gates used by aircraft for enplaning and deplaning revenue passengers. Under no circumstances shall any gates constructed, improved, or repaired with Federal funding under this paragraph be subject to long-term leases for periods exceeding 10 years or majority in interest clauses.".

SEC. 9110. PASSENGER FACILITY CHARGES.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended—

(1) in subsection (a) by inserting "except as provided in subsection (e) and" before "except that"; and

(2) by adding at the end the following new subsection:

"(e) AUTHORITY FOR IMPOSITION OF PASSENGER FACILITY CHARGES.—

"(1) IN GENERAL.—Subject to the provisions of this subsection, the Secretary may grant a public agency which controls a commercial service airport authority to impose a fee of $1.00, $2.00, or $3.00 for each paying passenger of an air carrier enplaned at such airport to finance eligible airport-related projects to be carried out in connection with such airport or any other airport which such agency controls. For purposes of this subsection, financing an eligible airport-related project includes making payments for debt service on bonds and other indebtedness incurred to carry out such project.

"(2) USE OF REVENUES AND RELATIONSHIP BETWEEN FEES AND REVENUES.—The Secretary may grant a public agency which controls a commercial service airport authority to impose a fee under this subsection to finance specific projects only if the Secretary finds, on the basis of an application submitted for such authority—

"(A) that the amount and duration of the proposed fee will result in revenues (including interest and other returns on such revenues) which do not exceed amounts necessary to finance the specific projects; and

"(B) that each of the specific projects is an eligible airport-related project which will—

"(i) preserve or enhance capacity, safety, or security of the national air transportation system,

"(ii) reduce noise resulting from an airport which is part of such system, or

"(iii) furnish opportunities for enhanced competition between or among air carriers.

"(3) LIMITATION REGARDING PASSENGERS OF AIR CARRIERS RECEIVING ESSENTIAL AIR SERVICE COMPENSATION.—If a passenger of an air carrier is being provided air service to an eligible point under section 419 for which compensation is being paid under such section, a public agency which controls any other airport may not impose a fee pursuant to this subsection for enplanement of such passenger with respect to such air service.

"(4) LIMITATION REGARDING OBLIGATIONS.—No fee may be imposed pursuant to this subsection for a project which is not approved by the Secretary under this subsection on or before September 30, 1992—

"(A) if, during fiscal years 1991 and 1992, the amount available for obligation, in the aggregate, under section 505 of Airport and Airway Improvement Act of 1982 is less than $3,700,000,000; or

"(B)(i) if, during fiscal year 1991, the amount available for obligation, in the aggregate, under section 419 is less than $26,600,000; or

"(ii) if, during fiscal year 1992, the amount available for obligation, in the aggregate, under section 419 is less than $38,600,000.

"(5) LINKAGE.—The Secretary may not grant a public agency authority to impose a fee pursuant to this subsection unless the Secretary has—

"(A) issued a final rule establishing a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft pursuant to section 9304(a) of the Airport Noise and Capacity Act of 1990; and

"(B) issued a notice of proposed rulemaking to consider more efficient allocation of existing capacity at high density airports under section 9126 of the Aviation Safety and Capacity Expansion Act of 1990.

"(6) TWO ENPLANEMENTS PER TRIP LIMITATION.—Enplaned passengers on whom a fee may be imposed by a public agency pursuant to this subsection include passengers of air carriers originating or connecting at the commercial service airport which the agency controls. A fee may not be collected pursuant to this subsection from a passenger with respect to any enplanement of such passenger, on a one-way trip and on a trip in each direction of a round trip, after the second enplanement for which a fee has been collected pursuant to this subsection from such passenger.

"(7) AIR CARRIER RATES, FEES, AND CHARGES.—

"(A) TREATMENT OF FEE REVENUES.—Revenues derived from fees collected pursuant to this subsection shall not be treated as airport revenues for the purpose of establishing a rate, fee, or charge pursuant to a contract between a public agency which controls a commercial service airport and an air carrier.

"(B) CAPITAL COSTS.—Except as provided by subparagraph (C), a public agency which controls a commercial service airport shall not include in its rate base by means of

depreciation, amortization, or any other method that portion of the capital costs of a project paid for using revenues derived from fees collected pursuant to this subsection for the purpose of establishing a rate, fee, or charge pursuant to a contract between such agency and an air carrier.

"(C) FACILITIES FINANCED WITH FEE REVENUES.—With respect to a project for terminal development, gates and related areas, or a facility which is occupied or utilized by 1 or more air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by air carriers which use such facilities shall be no less than the rates, fees, and charges paid by carriers using similar facilities at the airport which were not financed using revenues derived from collection of a fee imposed pursuant to this subsection.

"(8) EXCLUSIVITY OF AUTHORITY.—No State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom. No contract between an air carrier and a public agency which controls a commercial service airport entered into before, on, or after the date of the enactment of this subsection shall impair the authority of the public agency to impose fees pursuant to this subsection and to use the revenues derived from such fees in accordance with this subsection.

"(9) NONEXCLUSIVITY OF CONTRACTUAL AGREEMENTS.—No project carried out through the use of a fee collected pursuant to this subsection may be subject to an exclusive long-term lease or use agreement of an air carrier, as defined by the Secretary by regulation. No lease or use agreement of an air carrier with respect to a project constructed or expanded through the use of such fee may restrict the public agency which controls the airport from funding, developing, or assigning new capacity at the airport with revenues derived from fees imposed pursuant to this subsection.

"(10) COLLECTION AND HANDLING OF FEES BY AIR CARRIERS.—The regulations issued by the Secretary to carry out this subsection shall—

"(A) require air carriers and their agents to collect fees imposed by public agencies pursuant to this subsection;

"(B) establish procedures regarding handling and remittance of the amounts so collected;

"(C) ensure that such amounts are promptly paid to the public agency for which they are collected less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses (net of interest accruing to the air carrier and agent after collection and prior to remittance) incurred in the collection and handling of such fees; and

"(D) require that the amount of fees collected pursuant to this subsection with respect to any air transportation be noted on the ticket for such air transportation.

"(11) APPLICATION PROCESS.—

"(A) SUBMISSION.—A public agency which controls a commercial service airport and is interested in imposing a fee pursuant to this subsection shall submit to the Secretary an application for authority to impose such fee.

"(B) CONTENT.—An application submitted under this paragraph shall contain such information and be in such form as the Secretary may require by regulation.

"(C) OPPORTUNITY FOR CONSULTATION.—Before submission of an application under this paragraph, a public agency shall provide reasonable notice to, and an opportunity for consultation with, air carriers operating at the airport. The Secretary shall issue regulations which define reasonable notice and contain the following requirements at a minimum:

"(i) A public agency must provide written notice—

"(I) of individual projects being considered for funding through imposition of a fee pursuant to this subsection; and

"(II) of the date and location of a meeting to present such projects to air carriers operating at the airport.

"(ii) Not later than 30 days after the issuance of a written notice under clause (i), each air carrier operating at the airport must provide to the public agency written notice of receipt of such notice. Failure of an air carrier to provide such notice may be deemed as certification of agreement with the project by such air carrier under clause (iv).

"(iii) Not later than 45 days after the issuance of written notice under clause (i), the public agency must conduct a meeting to provide air carriers—

"(I) descriptions of projects;

"(II) justifications for projects; and

"(III) a detailed financial plan for projects.

"(iv) Not later than 30 days after the date of such meeting, each air carrier must provide the public agency with certification of agreement or disagreement with projects (or total plan for such projects). The failure of an air carrier to submit such certification shall be deemed as certification of agreement with the project by such air carrier. Any certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons will void the certification of disagreement.

"(D) NOTICE AND OPPORTUNITY FOR COMMENT.—After receiving an application under this paragraph, the Secretary shall provide notice and an opportunity for comment by air carriers and other interested persons concerning such application.

"(E) APPROVAL.—A fee may only be imposed pursuant to this subsection if the Secretary approves an application granting authority for the imposition of such fee. Not later than 120 days after the date of receipt of such an application, the Secretary shall make a final decision regarding approval of such application.

"(12) RECORDKEEPING AND AUDITS.—

"(A) WITH RESPECT TO COLLECTION OF FEES.—The Secretary shall issue regulations requiring such recordkeeping and auditing of accounts maintained by an air carrier and any agency thereof which is collecting a fee imposed pursuant to this subsection and by the public agency which is

imposing such fee as may be necessary to ensure compliance with this subsection.

"(B) WITH RESPECT TO USE OF REVENUES.—The Secretary shall periodically audit and review the use by a public agency which controls an airport of revenues derived from a fee imposed pursuant to this subsection. Upon such review and after a public hearing, the Secretary may terminate the authority of such agency to impose such fee, in whole or in part, to the extent the Secretary determines that revenues derived therefrom are not being used in accordance with this subsection.

"(C) SET-OFF.—If the Secretary determines that a fee imposed pursuant to this subsection is excessive or that the revenues derived from such fee are not being used in accordance with this subsection, the Secretary may set off such amounts as may be necessary to ensure compliance with this subsection against amounts otherwise payable to the public agency under the Airport and Airway Improvement Act of 1982.

"(13) TERMS AND CONDITIONS.—Authority granted to impose a fee pursuant to this subsection shall be subject to such terms and conditions as the Secretary may establish to carry out the objectives of this subsection.

"(14) ISSUANCE OF REGULATIONS.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall issue such regulations as may be necessary to carry out this subsection. Such regulations may prescribe the time and form by which a fee imposed pursuant to this subsection shall take effect.

"(15) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) AIR CARRIER.—The term 'air carrier' includes a foreign air carrier.

"(B) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms 'airport', 'commercial service airport', and 'public agency' have the meaning such terms have under section 503 of the Airport and Airway Improvement Act of 1982.

"(C) ELIGIBLE AIRPORT-RELATED PROJECT.—The term 'eligible airport-related project' means—

"(i) a project for airport development under the Airport and Airway Improvement Act of 1982;

"(ii) a project for airport planning under such Act;

"(iii) a project for terminal development described in section 513(b) of such Act;

"(iv) a project for airport noise capability planning under section 103(b) of the Aviation Safety and Noise Abatement Act of 1979;

"(v) a project to carry out noise compatibility measures which are eligible for assistance under section 104 of the Aviation Safety and Noise Abatement Act of 1979 without regard to whether or not a program has been approved for such measures under such section; and

"(vi) a project for construction of gates and related areas at which passengers are enplaned or deplaned.

"(D) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.".

SEC. 9111. REDUCTION IN AIRPORT IMPROVEMENT PROGRAM APPORTIONMENTS FOR LARGE AND MEDIUM HUB AIRPORTS IMPOSING PASSENGER FACILITY CHARGES.

Section 507(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(b)) is amended by adding at the end the following new paragraph:

"(7) REDUCTION IN APPORTIONMENTS TO CERTAIN LARGE AND MEDIUM HUBS.—

"(A) GENERAL RULE.—The amount which, but for this paragraph, would be apportioned under this section (other than subsection (a)(2)) for a fiscal year to a sponsor of an airport that annually has 0.25 percent or more of the total annual enplanements in the United States and for which a fee is imposed in such fiscal year pursuant to section 1113(e) of the Federal Aviation Act of 1958 shall be reduced by an amount equal to 50 percent of the projected revenues derived from such fee in such fiscal year.

"(B) LIMITATIONS.—The maximum reduction in an apportionment to a sponsor of an airport as a result of this paragraph in a fiscal year shall be 50 percent of the amount which, but for this paragraph, would be apportioned to such airport under this section.".

SEC. 9112. USE OF PFC REDUCED APPORTIONMENT FUNDS.

(a) ADDITION OF FUNDS TO EXISTING DISCRETIONARY FUND.—Section 507(c)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(c)(1)) is amended by inserting after the first sentence the following new sentences: "Twenty-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall be added to such discretionary fund. Fifty percent of amounts added to such discretionary fund pursuant to the preceding sentence shall be used for making grants for projects at small hub airports (as such term is defined in section 419(k) of the Federal Aviation Act of 1958).".

(b) SMALL AIRPORT FUND.—Section 507 of such Act is amended by redesignating subsections (d) and (e), and any references thereto, as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) SMALL AIRPORT FUND.—

"(1) ESTABLISHMENT.—Seventy-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall constitute a small airport fund to be distributed at the discretion of the Secretary.

"(2) SET-ASIDE FOR GENERAL AVIATION AIRPORTS.—One-third of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of public-use airports (other than commercial service airports) for any purpose for which funds are made available under section 505.

"(3) SET-ASIDE FOR NONHUB AIRPORTS.—Two-thirds of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of

commercial service airports each of which annually has less than 0.05 percent of the total annual enplanements in the United States for any purpose for which funds are made available under section 505.

"(4) TREATMENT OF AIRPORTS PARTICIPATING IN STATE BLOCK PROGRAM.—An airport in a State which is participating in the State block grant program under section 534 shall be eligible to receive grants pursuant to this subsection to the same extent that the airport would be eligible to receive such grants if the State was not participating in such program.".

(c) PROHIBITION ON REDUCED FUNDING.—It is the sense of Congress that the Secretary should not reduce funding under the discretionary fund established under section 507(c) of the Airport and Airway Improvement Act of 1982 for small commercial service and general aviation airports as a result of additional funds made available to such airports under this section, including amendments made by this section. 49 USC app. 2206 note.

SEC. 9113. SMALL COMMUNITY AIR SERVICE PROGRAM.

(a) DEFINITION OF ELIGIBLE POINT.—Section 419(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1389(a)) is amended to read as follows:

"(a) ELIGIBLE POINT DEFINED.—

"(1) GENERAL RULE.—For purposes of this section, the term 'eligible point' means any point in the United States—

"(A) which was defined as an eligible point under this section as in effect before October 1, 1988;

"(B) which received scheduled air transportation at any time after January 1, 1990; and

"(C) which is not listed in the Department of Transportation Orders 89-9-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

"(2) LIMITATION ON USE OF PER PASSENGER SUBSIDY.—The Secretary may not determine that a point described in paragraph (1) is not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section.".

(b) FUNDING.—

(1) IN GENERAL.—Section 419 of such Act is amended by redesignating subsection (1), and any reference thereto, as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) FUNDING.—

"(1) CONTRACT AUTHORITY.—The Secretary is authorized to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of compensation under this section. Approval by the Secretary of such an agreement shall be deemed a contractual obligation of the United States for payment of the Federal share of such compensation.

"(2) AMOUNTS AVAILABLE.—There shall be available to the Secretary from the Airport and Airway Trust Fund to incur obligations under this section $38,600,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998. Such amounts shall remain available until expended.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect October 1, 1991. 49 USC app. 1389 note.

(c) CONFORMING AMENDMENTS.—Section 333 of Public Law 100-457 and section 325(a) of Public Law 101-164 are repealed.

SEC. 9114. STATE BLOCK GRANT PILOT PROGRAM.

Section 534 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2227) is amended—

(1) in subsection (a) by striking "1991" and inserting "1992"; and

(2) in subsection (d) by striking "not later than 90 days before its scheduled termination" and inserting "not later than January 31, 1992".

49 USC app. 1348 note.

SEC. 9115. AUXILIARY FLIGHT SERVICE STATION PROGRAM.

(a) GENERAL RULE.—The Secretary of Transportation shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall report to Congress with the plan and schedule for implementation of this section.

SEC. 9116. AIRPORT AND AIRWAY IMPROVEMENTS FOR THE VIRGIN ISLANDS.

(a) AIR SPACE STUDY.—The Administrator of the Federal Aviation Administration shall conduct an air space study of the Caribbean and Miami air traffic control regions for the purpose of determining methods of improving air safety and report to Congress the results of such study.

(b) OPERATIONS OF AIRPORT TOWERS FOR ST. THOMAS AND ST. CROIX.—The Administrator may not enter into contracts with private persons for operation of the airport control towers for St. Thomas and St. Croix, Virgin Islands, before the 30th day following the date on which a report is submitted to Congress under subsection (a).

(c) REPLACEMENT OF RADAR FACILITIES FOR ST. THOMAS.—The Administrator shall take such action as may be necessary to ensure that the radar facilities for the airport on St. Thomas, Virgin Islands, which were destroyed by Hurricane Hugo are replaced and operational by the 120th day following the date of the enactment of this Act.

SEC. 9117. ENGINE CONDITION MONITORING SYSTEMS.

(a) STUDY.—The Administrator of the Federal Aviation Administration shall conduct a study of the potential use of engine condition monitoring systems on aircraft. In conducting such study, the Administrator shall evaluate—

(1) the availability of technology for such systems;

(2) the capabilities of such systems in terms of enhancing safety and reducing maintenance costs associated with civil and military aircraft;

(3) the commercial viability of developing computer software to enable maintenance workers to efficiently use data gathered by such systems;

(4) the costs and benefits of using such systems as compared to engine fault detection methods which rely on the use of data relating to historical performance and statistical failure;

(5) the types of aircraft engine failures which may be prevented by using such systems; and

(6) the operational reliability of such systems.

(b) REPORT TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study conducted pursuant to this section together with such legislative and administrative recommendations as the Administrator considers appropriate.

SEC. 9118. PROCUREMENT AUTHORITY.

(a) IN GENERAL.—Section 303 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1344) is amended to read as follows:

"SEC. 303. PROCUREMENT AUTHORITY.

"(a) ACQUISITION AND DISPOSAL OF PROPERTY.—Subject to subsection (b), the Administrator, on behalf of the United States, is authorized, where appropriate—

"(1) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease for a term not to exceed 20 years, or otherwise, personal property or services and real property or interests therein, including, in the case of air navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith;

"(2) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interest therein; except that, other than for airport and airway property and technical equipment used for the special purposes of the Federal Aviation Administration, such disposition shall be made in accordance with the Federal Property and Administrative Services Act of 1949; and

"(3) to construct, improve, or renovate laboratories and other test facilities and to purchase or otherwise acquire real property required therefor.

"(b) SPECIAL RULES FOR CERTAIN ACQUISITIONS.—

"(1) ACQUISITIONS BY CONDEMNATION.—Any acquisition by condemnation under subsection (a) may be made in accordance with the provision of the Act of August 1, 1888 (40 U.S.C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U.S.C. 258a–258e–1; 46 Stat. 1421), or any other applicable Act; except that, in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land.

"(2) ACQUISITIONS OF PUBLIC BUILDINGS.—The Administrator may, under subsection (a) construct or acquire by purchase, condemnation, or lease a public building, or interest in a public building (as defined in section 13 of the Public Buildings Act of

1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services.

"(c) PROCUREMENT PROCEDURES.—In procuring personal property or services and real property and interests therein under subsection (a), the Administrator may use procedures other than competitive procedures in circumstances which are set forth in section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)).

"(d) SOLE SOURCE APPROVAL BY ADMINISTRATOR.—For procurements by the Federal Aviation Administration, the Administrator shall be the senior procurement executive referred to in paragraph (3) of section 16 of Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purposes of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)).

"(e) MULTIYEAR SERVICE CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, the Administrator may enter into contracts for periods of not more than 5 years for the following types of services (and items of supply related to such services) for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

"(A) operation, maintenance, and support of facilities and installations;

"(B) operation, maintenance, or modification of aircraft, vehicles, and other highly complex equipment;

"(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

"(D) base services (for example, ground maintenance, in-plane refueling; bus transportation; refuse collection and disposal).

"(2) FINDINGS.—The Administrator may enter into a contract described in paragraph (1) only if the Administrator finds that—

"(A) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

"(B) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized workforce; and

"(C) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

"(3) GUIDANCE PRINCIPLES.—In entering into contracts described in paragraph (1), the Administrator shall be guided by the following principles:

"(A) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, the due consideration given

to such factors as location of facilities, specialized nature thereof, and obsolescence.

"(B) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed 3 years, at prices not to include charges for plant, equipment, and other nonrecurring costs, already amortized.

"(C) Consideration shall be given to the desirability of reserving in the Federal Aviation Administration the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

"(4) TERMINATION.—In the event funds are not made available for the continuation of a contract described in paragraph (1) into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(f) MULTIYEAR PROPERTY ACQUISITION CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, to the extent that funds are otherwise available for obligation, the Administrator may make multiyear contracts (other than contracts described in paragraph (6)) for the purchase of property, whenever the Administrator finds—

"(A) that the use of such a contract will promote the safety or efficiency of the National Airspace System and will result in reduced total costs under the contract;

"(B) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

"(C) that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request funding for the contract at the level required to avoid contract cancellation;

"(D) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive; and

"(E) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

"(2) REGULATIONS.—

"(A) GENERAL RULE.—The Administrator shall issue regulations for acquisition of property under this subsection to promote the use of multiyear contracting as authorized by paragraph (1) in a manner that will allow the most efficient use of multiyear contracting.

"(B) CANCELLATION PROVISIONS.—The regulations issued under this paragraph may provide for cancellation provisions in multiyear contracts described in paragraph (1) to the extent that such provisions are necessary and in the

best interests of the United States. Such cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

"(C) BROADENING INDUSTRIAL BASE.—In order to broaden the aviation industrial base, the regulations issued under this paragraph shall provide that, to the extent practicable—

"(i) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

"(ii) upon accrual of any payment or other benefit under such a multiyear contract to any subcontract, vendor, or supplier company participating in such contractor, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

"(D) PROTECTION OF FEDERAL INTERESTS.—The regulations issued under this paragraph shall also provide that, to the extent practicable, the administration of this subsection, and of the regulations issued under this subsection, shall not be carried out in a manner to preclude or curtail the existing ability of the Federal Aviation Administration to—

"(i) provide for competition in the production of items to be delivered under such a contract; or

"(ii) provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

"(3) SPECIAL RULE FOR CONTRACTS WITH HIGH CANCELLATION CEILING.—Before any contract described in paragraph (1) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the Administrator shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

"(4) ADVANCE PROCUREMENT.—Contracts made under this subsection may be used for the advance procurement of components, parts, and materials necessary to the manufacture of equipment to be used in the National Airspace System, and contracts may be made under this subsection for such advance procurement, if feasible and practicable, in order to achieve economic-lot purchases and more efficient production rates.

"(5) TERMINATION.—In the event funds are not made available for the continuation of a contract made under this subsection into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(6) LIMITATION ON APPLICABILITY.—This subsection does not apply to contracts for the construction, alteration, or major repair or improvements to real property or contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

"(7) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than 1, but not more than 5, fiscal years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

"(8) PRICE OPTIONS.—The Administrator may incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.".

(b) CONFORMING AMENDMENT.—The portion of the table of contents contained in the first section of such Act relating to section 303 is amended to read as follows:

"Sec. 303. Procurement authority.
"(a) Acquisition and disposal of property.
"(b) Special rules for acquisitions.
"(c) Procurement procedures.
"(d) Sole source approval by Administrator.
"(e) Multiyear service contracts.
"(f) Multiyear property acquisition contracts.".

SEC. 9119. EXPANDED EAST COAST PLAN.

(a) ENVIRONMENTAL IMPACT STATEMENT.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(b) AIR SAFETY INVESTIGATION.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall conduct an investigation to determine the effects on air safety of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the environmental impact statement and investigation conducted pursuant to this section. Such report shall also contain such recommendations for modification of the Expanded East Coast Plan as the Administrator considers appropriate or an explanation of why modification of such plan is not appropriate.

(d) IMPLEMENTATION OF MODIFICATIONS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall implement modifications to the Expanded East Coast Plan recommended under subsection (c).

SEC. 9120. TRANSFER OF FORMAT OF GEODETIC NAVIGATION INFORMATION.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the National Oceanic and Atmospheric Administration shall complete the transfer of geodetic coordinate navigation information from NAD-27 format to NAD-83 format.

SEC. 9121. SENSITIVE SECURITY INFORMATION.

Section 316(d)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1357(d)(2)) is amended—

(1) by inserting "security or" before "research and development activities"; and

(2) by striking "subsection" and inserting "title".

SEC. 9122. REPORTS.

Section 107 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1307) is amended in subsections (b) and (c) by striking "each April 1 thereafter" each place it appears and inserting "through April 1, 1990".

SEC. 9123. ATLANTIC CITY AIRPORT.

Section 312 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (101 Stat. 1528) is repealed.

SEC. 9124. NATURAL DISASTER REGULATION.

Title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421-1432) is amended by inserting after section 612 the following new section:

49 USC app. 1433.

"SEC. 613. SAFETY REGULATION.

"(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section, the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

"(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a ligitimate [73] scientific purpose.

"(c) STATUS OF STUDIES.—Not later than the 90th day following the date of the enactment of this section, the Administrator shall report to Congress on the status of the studies and reports required by the Act entitled 'An Act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national airport system units', approved August 18, 1987 (101 Stat. 674-678; 16 U.S.C. 1a-1 note).".

SEC. 9125. FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended by adding at the end the following new subsection:

"(f) FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.—No State (as such term is defined under subsection (d)(2)(E)) or political subdivision thereof shall levy or collect any tax on or with respect to any flight of a commercial aircraft or any activity or service on board such aircraft unless such aircraft takes off or lands in such State or political subdivision as part of such flight.".

[73] So in original. Probably should be "legitimate".

SEC. 9126. ALLOCATION OF EXISTING CAPACITY AT CERTAIN AIRPORTS.

(a) RULEMAKING.—The Secretary of Transportation shall, by July 1, 1991, initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density traffic airports in order to provide improved opportunities for operations by new entrant air carriers.

(b) DEFINITION.—In this section, the term "new entrant air carrier", as used with respect to a high density traffic airport, means an air carrier having less than 12 operating rights at such airport.

SEC. 9127. CERTIFICATE TRANSFERS.

Section 401(h) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) CERTIFICATION.—The Secretary of Transportation shall, upon any transfer of a certificate, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

"(3) ACCOMPANYING REPORT.—A certification under this subsection shall be accompanied by a report analyzing the effects of the transfer on—

"(A) the viability of each of the carriers involved in the transfer;

"(B) competition in the domestic airline industry,[74] and

"(C) the trade position of the United States in the international air transportation market.".

SEC. 9128. SEVERABILITY.

49 USC app. 2201 note.

If any provision of this subtitle (including an amendment made by this subtitle), or the application thereof to any person or circumstance, is held invalid, the remainder of this subtitle and the application of such provision to other persons of circumstances shall not be affected thereby.

SEC. 9129. BUY AMERICAN.

49 USC app. 2226a.

(a) GENERAL RULE.—Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this subtitle, section 106(k) of title 49, United States Code, or the Airport and Airway Improvement Act of 1982 (other than section 506(b)) for any project unless steel and manufactured products used in such project are produced in the United States.

(b) LIMITATIONS ON APPLICABILITY.—The provisions of subsection (a) of this section shall not apply where the Secretary finds—

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982 that (A) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment described in this

[74] So in original. Probably should be "industry;".

paragraph, and (B) final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) CALCULATION OF COMPONENTS COSTS.—For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

49 USC app. 2226b.

SEC. 9130. PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.

If the Secretary of Transportation determines that any person intentionally affixes a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall declare that person ineligible to receive a Federal contract or grant in conjunction with the issuance of any contract made under this subtitle for a period of not less than 3 years and not more than 5 years. The Secretary may bring action against such person to enforce this subsection in any United States district court.

49 USC app. 2226c.

SEC. 9131. RESTRICTIONS ON CONTRACT AWARDS.

No person or enterprise domiciled or operating under the laws of a foreign government may enter into a contract or subcontract made pursuant to this subtitle if that government unfairly maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

Subtitle C—Federal Aviation Administration Research, Engineering, and Development

Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990. 49 USC app. 2201 note.

SEC. 9201. SHORT TITLE.

This subtitle may be cited as the "Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990".

SEC. 9202. AVIATION RESEARCH AUTHORIZATION OF APPROPRIATIONS.

Paragraph (2) of section 506(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)) is amended by striking subparagraph (A) and all that follows through the period at the end of such paragraph and inserting the following:

"(A) for fiscal year 1991—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities; and

"(B) for fiscal year 1992—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities.

Not less than 3 percent of the funds made available under this paragraph for a fiscal year shall be available to the Administrator for making grants under section 312(g) of the Federal Aviation Act of 1958.".

SEC. 9203. ENHANCED AIRPORT CAPACITY.

Section 506(b)(4) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(b)(4)) is amended—

(1) in subparagraph (A) by striking "and 1990" and inserting "1990, 1991, and 1992"; and

(2) in subparagraph (B) by striking "and 1990" and inserting "1990, 1991, and 1992".

SEC. 9204. WEATHER SERVICES.

Section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended by striking the second sentence and inserting the following: "Expenditures for the purposes of carrying out this subsection shall be limited to $34,521,000 for fiscal year 1991 and $35,389,000 for fiscal year 1992.".

SEC. 9205. AVIATION RESEARCH GRANT PROGRAM.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353) is amended by adding the following new subsection:

"(g) RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation.

"(2) APPLICATIONS.—A university, college, or nonprofit organization interested in receiving a grant under this subsection may submit to the Administrator an application for such grant. Such application shall be in such form and contain such information as the Administrator may require.

"(3) SELECTION.—The Administrator shall establish a solicitation, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit

and relevancy to the mission of the Federal Aviation Administration, (B) an equitable geographical distribution of grant funds under this subsection, and (C) the inclusion of historically black colleges and universities and other minority institutions for funding consideration under this subsection.

"(4) RECORDS.—Each person awarded a grant under this subsection shall maintain such records as the Administrator may require as being necessary to facilitate an effective audit and evaluation of the use of grant funds.

"(5) REPORTS.—The Administrator shall make an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the research grant program conducted under this subsection.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(g) Research grant program.".

SEC. 9206. STUDY BY THE GENERAL ACCOUNTING OFFICE OF MULTIYEAR CONTRACTING AUTHORITY.

The Comptroller General of the United States shall conduct a study of the advisability of granting to the Administrator of the Federal Aviation Administration specific statutory authority—

(1) to lease real property or interests therein for terms not to exceed 20 years, including, in the case of air navigation facilities and airports (as such terms are defined in section 101 (8) and (9) of the Federal Aviation Act of 1958) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and in connection therewith;

(2) to procure personal property or services and real property and interests therein with procedures other than competitive procedures under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c));

(3) to serve as the senior procurement executive under section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purpose of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii));

(4) to let multiyear contracts for services, including the operation, maintenance, and support of facilities and installations; the operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment; specialized training necessitating high quality instructor skills; and base services; and

(5) to let multiyear contracts for the purchase of property.

The study also shall examine the implementation of section 2306(g) and (h) of title 10, United States Code, by the Department of Defense, and shall assess the usefulness of granting similar authority to the Federal Aviation Administration. The Comptroller General shall submit a report on the results of the study, along with any comments of the Administrator of the Federal Aviation Administra-

tion, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate within 6 months after the date of enactment of this Act.

SEC. 9207. BUY-AMERICAN REQUIREMENT.

49 USC app. 2226d.

(a) DETERMINATION BY ADMINISTRATOR.—If the Administrator, with the concurrence of the Secretary of Commerce and the United States Trade Representative, determines that the public interest so requires, the Administrator is authorized to award to a domestic firm a contract made pursuant to the issuance of any grant made under this subtitle that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.

(b) LIMITED APPLICATION.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) LIMITATION.—This section shall apply only to contracts made related to the issuance of any grant made under this subtitle for which—

(1) amounts are authorized by this subtitle (including the amendments made by this subtitle) to be made available; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

(d) REPORT TO CONGRESS.—The Administrator shall report to the Congress on contracts covered under this section and entered into with foreign entities in fiscal years 1991 and 1992 and shall report to the Congress on the number of contracts that meet the requirements of subsection (a) but which are determined by the United States Trade Representative to be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. The Administrator shall also report to the Congress on the number of contracts covered under this subtitle (including the amendments made by this subtitle) and awarded based upon the parameters of this section.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Federal Aviation Administration;

(2) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(3) the term "foreign firm" means a business entity not described in paragraph (2).

SEC. 9208. CATASTROPHIC FAILURE PREVENTION RESEARCH PROGRAM.

(a) GENERAL AUTHORITY.—Section 312(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(b)) is amended by inserting after "inflight aircraft fires," the following; [75] "to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft,".

(b) GRANT PROGRAM.—Section 312 of such Act is amended by adding at the end the following new subsection:

"(h) CATASTROPHIC FAILURE PREVENTION RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations (A) to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft, and (B) to establish centers of excellence for continuing such research.

"(2) SELECTION AND EVALUATION PROCESSES.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the research described in paragraph (1).".

(c) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(h) Catastrophic failure prevention research grant program.".

SEC. 9209. AVIATION RESEARCH AND CENTERS OF EXCELLENCE.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353) is amended by adding at the end the following new subsection:

"(i) AVIATION RESEARCH AND CENTERS OF EXCELLENCE.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable.

"(2) RESPONSIBILITIES.—The responsibilities of each regional center of air transportation excellence established under this subsection shall include, but not be limited to, the conduct of research concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system, and the interpretation, publication, and dissemination of the results of such research. In conducting such

[75] So in original. Probably should be "following:".

research, each center may contract with nonprofit research organizations and other appropriate persons.

"(3) APPLICATION.—Any college or university interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

"(B) The demonstrated research and extension resources available to the applicant for carrying out this subsection.

"(C) The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

"(D) The extent to which the applicant has an established air transportation program.

"(E) The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

"(F) The projects which the applicant proposes to carry out under the grant.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional center of air transportation excellence and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operating the regional center of air transportation excellence and related research activities carried out by the grant recipient.

"(7) ALLOCATION OF FUNDS.—Funds made available to carry out this subsection shall be allocated by the Administrator in a geographically equitable manner.".

(b) RESEARCH ADVISORY COMMITTEE.—

(1) Section 312(f)(2) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(2)) is amended by adding at the end the following new sentence: "In addition, the committee shall review the research and training to be carried out by the regional centers of air transportation excellence established under subsection (h).".

(2) Section 312(f)(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(3)) is amended—

(A) by striking "20" and inserting "30"; and

(B) by striking the last sentence and inserting the following: "The Administrator in appointing the members of the committee shall ensure that the research centers of air

transportation excellence, universities, corporations, associations, consumers, and other Government agencies are represented.".

(c) RESEARCH AUTHORITY OF ADMINISTRATOR.—Section 312(c) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(c)) is amended by inserting after the third sentence the following: "The Administrator shall undertake or supervise research programs concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system.".

(d) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 relating to section 312 of that Act is amended by adding at the end the following:

"(i) Aviation research and centers of excellence.".

Airport Noise and Capacity Act of 1990.

Subtitle D—Aviation Noise Policy

49 USC app. 2151 note.

SEC. 9301. SHORT TITLE.

This subtitle may be cited as the "Airport Noise and Capacity Act of 1990".

49 USC app. 2151.

SEC. 9302. FINDINGS.

The Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;

(3) a noise policy must be implemented at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft, combined with the use of revenues, including those available from passenger facility charges, for noise management;

(6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of passenger facility charges is the issuance by the Secretary of Transportation of a final rule establishing procedures for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

49 USC app. 2152.

SEC. 9303. NATIONAL AVIATION NOISE POLICY.

(a) DEVELOPMENT.—Not later than July 1, 1991, the Secretary of Transportation (hereinafter in this subtitle referred to as the "Secretary") shall issue regulations establishing a national aviation noise policy which takes into account the findings, determinations,

and provisions of this subtitle, including the phaseout and nonaddition of Stage 2 aircraft as provided in this subtitle and implementation dates and reporting requirements consistent with this subtitle and existing law.

(b) BASIS.—The national aviation noise policy shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airline and aircargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry.

(c) RECOMMENDATIONS.—Not later than July 1, 1991, the Secretary shall transmit to Congress recommendations on—

(1) the need for changes in the standards and procedures which govern the rights of State and local governments (including airport authorities) to restrict aircraft operations for the purpose of limiting aircraft noise;

(2) the need for changes in the standards and procedures which govern law suits by persons adversely affected by aircraft noise;

(3) the need for changes in standards and procedures for Federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects;

(4) the need for changes in the Federal program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land impacted by aircraft noise;

(5) whether any changes in policy recommended in paragraphs (1) through (4) should be accomplished through regulatory, administrative, or legislative action; and

(6) specific legislative proposals necessary for implementing the national aviation noise policy.

SEC. 9304. NOISE AND ACCESS RESTRICTION REVIEWS. 49 USC 2153.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The national aviation noise policy to be established under this subtitle shall require the establishment, by regulation, in accordance with the provisions of this section of a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

(2) LIMITATIONS ON APPLICABILITY.—

(A) APPLICABILITY DATE FOR STAGE 2 AIRCRAFT.—With respect to Stage 2 aircraft, the requirements set forth in subsection (c) shall apply only to restrictions proposed after October 1, 1990.

(B) APPLICABILITY DATE FOR STAGE 3 AIRCRAFT.—With respect to Stage 3 aircraft, the requirements set forth in subsections (b) and (d) shall apply only to restrictions that first become effective after October 1, 1990.

(C) SPECIFIC EXEMPTIONS.—Subsections (b), (c), and (d) shall not apply to—

(i) a local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on the date of the enactment of this Act;

(ii) a local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before the date of the enactment of this Act;

(iii) an intergovernmental agreement including airport aircraft noise or access restriction in effect on the date of the enactment of this Act;

(iv) a subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on the date of the enactment of this Act that does not reduce or limit aircraft operations or affect aircraft safety;

(v)(I) a restriction which was adopted by an airport operator on or before October 1, 1990, and which was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction or a part thereof is subsequently allowed by a court to take effect; and

(II) in any case in which a restriction described in subclause (I) is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of the date of the enactment of this Act; and

(vi) a local action which represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction where the initial portion of such program was adopted during calendar year 1988 and was in effect on the date of the enactment of this Act.

(D) ADDITIONAL WORKING GROUP EXEMPTIONS.—Subsections (b) and (d) shall not apply where the Federal Aviation Administration has prior to the date of the enactment of this Act formed a working group (outside the process established by part 150 of title 14 of the Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, subsections (b) and (d) shall apply only to local actions to enforce such agreement.

(b) LIMITATION ON STAGE 3 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction on the operation of a Stage 3 aircraft, including but not limited to—

(1) a restriction as to noise levels generated on either a single event or cumulative basis;

(2) a limit, direct or indirect, on the total number of Stage 3 aircraft operations;

(3) a noise budget or noise allocation program which would include Stage 3 aircraft;

(4) a restriction imposing limits on hours of operations; and

(5) any other limit on Stage 3 aircraft;

shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and ap-

proved by the Secretary pursuant to an airport or aircraft operator's request for approval in accordance with the program established pursuant to this section.

(c) LIMITATION ON STAGE 2 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction shall include a restriction on operations of Stage 2 aircraft, unless the airport operator publishes the proposed noise or access restriction and prepares and makes available for public comment at least 180 days before the effective date of the restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed noise or access restriction;

(2) a description of alternative restrictions; and

(3) a description of the alternative measures considered which do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction.

(d) APPROVAL OF STAGE 3 AIRCRAFT RESTRICTIONS.—

(1) IN GENERAL.—Not later than the 180th day after the date on which the Secretary receives an airport or aircraft operator's request for approval of a noise or access restriction on the operation of a Stage 3 aircraft, the Secretary shall approve or disapprove such request.

(2) REQUIRED FINDINGS.—The Secretary shall not approve a noise or access restriction applying to Stage 3 aircraft operations unless the Secretary finds the following conditions to be supported by substantial evidence:

(A) The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.

(B) The proposed restriction does not create an undue burden on interstate or foreign commerce.

(C) The proposed restriction is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace.

(D) The proposed restriction does not conflict with any existing Federal statute or regulation.

(E) There has been an adequate opportunity for public comment with respect to the restriction.

(F) The proposed restriction does not create an undue burden on the national aviation system.

(e) INELIGIBILITY FOR PFC'S AND AIP FUNDS.—Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first became effective after October 1, 1990, shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under section 9304(a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

(f) REEVALUATION.—The Secretary may reevaluate any noise restrictions previously agreed to or approved under subsection (d) upon the request of any aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria established under subsection

(d) of the previously approved or agreed to noise restriction is therefore justified.

(g) PROCEDURES FOR REEVALUATION.—The Secretary shall establish by regulation procedures under which reevaluations under subsection (f) are to be accomplished. A reevaluation under subsection (f) of a restriction shall not occur less than 2 years after a determination under subsection (d) has been made with respect to such restriction.

(h) EFFECT ON EXISTING LAW.—Except to the extent required by the application of the provisions of this section, nothing in this subtitle shall be deemed to eliminate, invalidate, or supersede—

(1) existing law with respect to airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) the authority of the Secretary to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

49 USC app. 2154.

SEC. 9305. DETERMINATION REGARDING NOISE RESTRICTIONS ON CERTAIN STAGE 2 AIRCRAFT.

The Secretary shall determine by a study the applicability of subsections (a), (b), (c), and (d) of section 9304 to noise restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds. In making such determination, the Secretary shall consider—

(1) noise levels produced by such aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding such airports;

(4) international standards and accords with respect to aircraft noise; and

(5) such other factors which the Secretary deems necessary.

49 USC app. 2155.

SEC. 9306. FEDERAL LIABILITY FOR NOISE DAMAGES.

In the event that a proposed airport aircraft noise or access restriction is disapproved, the Federal Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims Court.

49 USC app. 2156.

SEC. 9307. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.

Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restriction not in compliance with this subtitle.

49 USC app. 2157.

SEC. 9308. PROHIBITION ON OPERATION OF CERTAIN AIRCRAFT NOT COMPLYING WITH STAGE 3 NOISE LEVELS.

(a) GENERAL RULE.—After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic

turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels, as determined by the Secretary.

(b) WAIVER.—

(1) APPLICATION.—If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

(2) GRANTING OF WAIVER.—The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

(3) LIMITATION.—A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

(c) COMPLIANCE SCHEDULE.—The Secretary shall, by regulation, establish a schedule for phased-in compliance with the prohibition set forth in subsection (a). The period of such phase-in shall begin on the date of the enactment of this Act and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

(d) EXEMPTION FOR NONCONTIGUOUS AIR SERVICE.—This section and section 9309 shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or a territory or possession of the United States on or after the date of the enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

(e) VIOLATIONS.—Violations of this section and section 9309 and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title VI.

(f) JUDICIAL REVIEW.—Actions taken by the Secretary under this section and section 9309 shall be subject to judicial review in accordance with section 1006 of the Federal Aviation Act of 1958.

(g) REPORTS.—Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section),

and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

(h) DEFINITIONS.—As used in this section, the following definitions apply:

(1) AIR CARRIER; AIR TRANSPORTATION; UNITED STATES.—The terms "air carrier", "air transportation", and "United States" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958.

(2) STAGE 3 NOISE LEVELS.—The term "Stage 3 noise levels" means the Stage 3 noise levels set forth in part 36 of title 14, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

49 USC app. 2158.

SEC. 9309. NONADDITION RULE.

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, no person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after the date of the enactment of this Act unless—

(1) it complies with the Stage 3 noise levels, or

(2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before such date of enactment.

(b) EXEMPTION FOR COMPLYING MODIFICATIONS.—The Secretary may provide an exemption from the requirements of subsection (a) to permit a person to obtain modifications to an aircraft to meet the Stage 3 noise levels.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—For the purposes of this section, an aircraft shall not be considered to have been imported into the United States if such aircraft—

(1) on the date of the enactment of this Act, is owned—

(A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);

(B) by an individual who is a citizen of the United States; or

(C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and

(2) enters into the United States not later than 6 months after the date of the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

TITLE X—MISCELLANEOUS USER FEES AND OTHER PROVISIONS

Subtitle A—Customs User Fees and Other Trade Provisions

PART I—CUSTOMS USER FEES

SEC. 10001. CUSTOMS USER FEES.

(a) EXTENSION OF EFFECTIVE PERIOD FOR FEES.—Paragraph (3) of section 13031(j) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking out "1991" and inserting "1995".

(b) ADJUSTMENT OF FEES FOR FORMALLY-ENTERED MERCHANDISE.—Paragraph (9) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)) is amended to read as follows:

"(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.17 percent ad valorem, unless adjusted under subparagraph (B).

"(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.19 percent nor less than 0.15 percent) that would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

"(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under section 613A of the Tariff Act of 1930 with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

"(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

"(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

"(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

"(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

"(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

"(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

"(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

"(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

"(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

"(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

"(D) Any fee charged under this paragraph, whether or not adjusted under subparagraph (B), is subject to the limitations in subsection (b)(8)(A).".

(c) AGGREGATION OF MERCHANDISE PROCESSING FEES.—Section 111(f)(1)(B) of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "determined in" and inserting "currently in effect under".

19 USC 58c note.

(d) CUSTOMS SERVICE ADMINISTRATION.—Section 113 of the Customs and Trade Act of 1990 is amended—

19 USC 2082.

(1) by inserting "and" after the semicolon at the end of subsection (a)(1);

(2) by striking out the semicolon at the end of subsection (a)(2) and inserting a period;

(3) by striking out paragraphs (3), (4), and (5) of subsection (a); and

(4) by striking out "Committees referred to in subsection (a)(5)" in subsection (b) and inserting "Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate".

(e) MERCHANDISE PROCESSING FEES FOR CERTAIN SMALL AIRPORTS.—

(1) Section 13031(a)(10)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)(C)) is amended by striking "applies," and inserting "applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release,".

(2) Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended by inserting ", if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year" in subparagraph (B)(ii) before the end period.

(f) MANUAL ENTRIES AND RELEASES.—Clause (ii) of section 13031(b)(8)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(C)(ii)) is amended to read as follows:

"(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—

"(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or

"(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.".

(g) EFFECTIVE DATES.— 19 USC 58c note.

(1) IN GENERAL.—The amendments made by subsections (b), (c), and (d) shall take effect on the date of the enactment of the Act providing full-year appropriations for the Customs Service for fiscal year 1992, and shall apply to fiscal years beginning on and after October 1, 1991.

(2) MERCHANDISE PROCESSING FEES FOR SMALL AIRPORTS.—The amendments made by subsection (e) shall take effect as if included in section 111 of the Customs and Trade Act of 1990.

(3) MANUAL ENTRIES AND RELEASES.—The amendment made by subsection (f) shall take effect on the date of the enactment of this Act.

PART II—TECHNICAL CORRECTIONS

SEC. 10011. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE.

(a) REDESIGNATIONS.—

(1) IN GENERAL.—Each subheading of the Harmonized Tariff Schedule of the United States that is listed in column A is redesignated as the subheading listed in column B opposite such column A subheading:

Column A	Column B
5111.20.60	5111.20.90
5111.30.60	5111.30.90
5111.90.70	5111.90.90
5112.19.10	5112.19.20
5112.19.60	5112.19.90
5112.90.60	5112.90.90
6116.10.10	6116.10.08
6116.10.15	6116.10.18
6116.10.25	6116.10.45
6116.10.35	6116.10.70
6116.10.60	6116.10.90
6116.92.10	6116.92.08
6116.92.20	6116.92.60
6116.92.30	6116.92.90
6116.93.10	6116.93.08
6116.93.15	6116.93.60
6116.93.20	6116.93.90
6116.99.30	6116.99.35
6116.99.60	6116.99.50
6116.99.90	6116.99.80
6216.00.10	6216.00.08
6216.00.15	6216.00.12
6216.00.20	6216.00.18

6216.00.27	6216.00.28
6216.00.31	6216.00.32
6216.00.34	6216.00.35
6216.00.38	6216.00.39
6216.00.44	6216.00.46
6216.00.49	6216.00.52
6216.00.50	6216.00.80
6216.00.60	6216.00.90
6702.90.40	6702.90.35
6702.90.60	6702.90.65
8712.00.10	8712.00.15
8712.00.20	8712.00.25
8712.00.30	8712.00.35
8714.94.20	8714.94.15
8714.94.50	8714.94.60
9022.90.80	9022.90.90
9603.10.20	9603.10.25
9603.10.70	9603.10.90

(2) STAGED RATE REDUCTION.—Any staged reductions of a special rate of duty set forth in a subheading of the Harmonized Tariff Schedule of the United States listed in column A in paragraph (1) that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall also apply to the corresponding special rates of duty set forth in the corresponding subheading listed in column B opposite such column A subheading.

(b) MISCELLANEOUS AMENDMENTS.—The Harmonized Tariff Schedule of the United States is further amended as follows:

(1) Chapter 61 is amended by striking out subheading 6116.10.50.

(2) Chapter 62 is amended by striking out subheadings 6216.00.23, 6216.00.29, and 6216.00.47.

(3) Subheading 6116.10.90, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the superior heading for subheading 6116.10.70, as redesignated by subsection (a).

(4) Subheading 6216.00.28, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by inserting the article description for such subheading at the same degree of indentation as the superior heading for subheading 6216.00.18, as redesignated by subsection (a).

(5) Subheading 6216.00.32, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the article description for subheading 6216.00.35, as redesignated by subsection (a).

(6) Subheading 6216.00.52, as redesignated by subsection (a), is amended by inserting the article description for such subheading at the same degree of indentation as subheading 6216.00.46, as redesignated by subsection (a).

(7) The article descriptions for subheadings 6116.10.08, 6116.92.08, 6116.93.08, 6116.99.35, 6216.00.08, 6216.00.35, and 6216.00.46, as redesignated by subsection (a), are each amended to read as follows: "Other gloves, mittens, and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens, and mitts".

(8) The superior heading for subheadings 8712.00.25 and 8712.00.35, as redesignated by subsection (a), is amended by striking out "65" and inserting "63.5".

(9) Heading 9902.30.07 is amended by striking out "2929.90.10" and inserting "2929.10.40".

(10) Heading 9902.30.08 is amended by striking out "2907.29.30" and inserting "2907.19.50".

(11) Heading 9902.30.42 is amended by striking out "19532-03-07" and inserting "19532-03-7".

(12) The article description for heading 9902.30.56 is amended by striking out "hydroxethyl" and inserting "hydroxyethyl".

(13) Heading 9902.30.83 (as enacted by section 388 of the Customs and Trade Act of 1990) is redesignated as heading 9902.31.11 and, as so redesignated, is amended by striking out "piperadinyl" and inserting "piperidinyl".

(14) Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.70.20	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter or 10 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds (provided for in subheading 7019.20.10, 7019.20.20, or 7019.20.50).....	Free	No change	No change	On or before 12/31/92	".

(15) Heading 9902.84.83 is amended by striking out "(A,C,E,IL)" and inserting "(A,C,CA,E,IL)".

(16) Heading 9902.87.14 is amended by striking out "brakes," the first place it appears.

(17) The article description for heading 9902.94.01 is amended by striking out "Furniture seats" and inserting "Furniture, seats,".

(c) EFFECTIVE DATE.—

(1) Subject to paragraphs (2) and (3), the amendments made by subsections (a) and (b) apply with respect to articles entered, or

withdrawn from warehouse for consumption, on or after October 1, 1990.

(2) Any amendment made by subsection (a) or (b) to a provision of the Harmonized Tariff Schedule of the United States that was the subject of an amendment made by title III of the Customs and Trade Act of 1990 shall—

(A) be treated as applying to that provision as established or amended by such title III; and

(B) if the amendment made by such title III has retroactive application under section 485(b) of such Act, be treated as applying with respect to entries made after the relevant applicable date (as defined in paragraph (2)(A) of such section 485(b)).

(3) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer before April 1, 1991, any entry—

(A) which was made after December 31, 1988, and before October 1, 1990; and

(B) with respect to which there would have been a lesser duty if any amendment made by subsection (b) (1) through (7) applied to such entry;

shall be liquidated or reliquidated as though such amendment applied to such entry.

SEC. 10012. TECHNICAL AMENDMENTS TO CERTAIN CUSTOMS LAWS.

(a) CUSTOMS FORFEITURE FUND.—

19 USC 1613b. (1) Paragraph (5) of section 121 of the Customs and Trade Act of 1990 is repealed and subsection (f) of section 613A of the Tariff Act of 1930 shall be applied as if the amendment made by such paragraph (5) had not been enacted.

19 USC 1613b. (2) Paragraph (2) of such section 613A(f) of the Tariff Act of 1930 (as in effect after the application of paragraph (1)) is amended to read as follows:

"(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) for such fiscal year.

"(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

"(i) $14,855,000 for fiscal year 1991.

"(ii) $15,598,000 for fiscal year 1992.".

(b) CERTAIN ENTRIES.—Section 484 of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "1801-000027" and inserting "1801-7-000027".

19 USC 1613b note. (c) EFFECTIVE DATE.—The provisions of this section take effect August 21, 1990.

SEC. 10013. STAGED RATE REDUCTION FOR ETBE.

(a) IN GENERAL.—Section 484G(b) of the Customs and Trade Act of 1990 is amended to read as follows:

"(b) STAGED RATE REDUCTION.—The President may proclaim such modifications to the rates of duty set forth in subheading 9901.00.52 with respect to goods originating in the territory of Canada as will result in reduction of such rates in equal annual stages and will make such products free of duty effective January 1, 1998.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 484G of the Customs and Trade Act of 1990.

Subtitle B—Patent and Trademark Office User Fees

SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

(a) SURCHARGES.—There shall be a surcharge, during fiscal years 1991 through 1995, of 69 percent, rounded by standard arithmetic rules, on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code. 35 USC 41 note.

(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office— 35 USC 41 note.

(1) in fiscal year 1991—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) $91,000,000 shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, and the additional surcharge receipts, totalling $18,807,000, shall be available only to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office,

(2) in fiscal years 1992 through 1995—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

(3) shall remain available until expended.

(c) REVISIONS.—In fiscal years 1991 through 1995, surcharges established under subsection (a) may be revised periodically by the Commissioner of Patents and Trademarks, subject to the provisions of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected: 35 USC 41 note.

(1) $109,807,000 in fiscal year 1991.
(2) $95,000,000 in fiscal year 1992.
(3) $99,000,000 in fiscal year 1993.
(4) $103,000,000 in fiscal year 1994.
(5) $107,000,000 in fiscal year 1995.

(d) REPEAL.—Section 105(a) of Public Law 100-703 (102 Stat. 4675) is repealed.

(e) REPORT ON FEES.—The Commissioner of Patents and Trademarks shall study the structure of all fees collected by the Patent and Trademark Office and, not later than May 1, 1991, shall submit to the Congress a report on all fees to be collected by the office in

fiscal years 1992 through 1995. The report shall include a proposed schedule of fees that would distribute the surcharges provided by subsection (a) among all fees collected by the office, and recommendations for any statutory changes that may be necessary to implement the proposals contained in the report.

35 USC 1 note.

SEC. 10102. FEDERAL AGENCY STATUS.

For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act.

35 USC 41 note.

SEC. 10103. EFFECT ON OTHER LAW.

Except for section 10101(d), nothing in this subtitle affects the provisions of Public Law 100-703 (102 Stat. 4674 and following).

Subtitle C—Science and Technology User Fees

SEC. 10201. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION USER FEES.

(a) AMENDMENTS.—Section 409 of the Act of November 17, 1988 (15 U.S.C. 1534) is amended—

(1) in subsection (a), by striking "archived" and all that follows and inserting in lieu thereof "and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration.";

(2) in subsection (b)(1)—

(A) by inserting ", information, and products" immediately after "data" the first place it appears; and

(B) by striking "data is" and inserting in lieu thereof "data, information, and products are";

(3) in subsection (b)(2)—

(A) by inserting ", information, or products" immediately after "data" the first place it appears; and

(B) by striking "data exchange basis" and inserting in lieu thereof "basis of exchanging such data, information, and products";

(4) in subsection (b), by inserting at the end the following new paragraph:

"(3) The Secretary shall waive the assessment of fees authorized by subsection (a) as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic Atmospheric Administration.";

(5) by amending paragraph (1) of subsection (d) to read as follows:

"(1) The initial schedule of fees established by the National Environmental Satellite, Data, and Information Service for archived data shall remain in effect for the 3-year period beginning on the date that the fees under that schedule take effect.";

(6) in subsections (d), (e), and (f)(1), by inserting "by the National Environmental Satellite, Data, and Information Service for archived data" immediately after "under this section" each place it appears; and

(7) in subsection (g), by striking the period at the end and inserting in lieu thereof the following: ", including the authority of the Secretary pursuant to section 1307 of title 44, United States Code. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44, United States Code.".

(b) EFFECT OF AMENDMENTS.—(1) The increase in revenues to the United States attributable to the amendments made by subsection (a) shall not exceed— 15 USC 1534 note.

(A) $2,000,000 for each of the fiscal years 1991, 1992, and 1993; and

(B) $3,000,000 for each of the fiscal years 1994 and 1995.

(2) Increases in revenues to the United States described in paragraph (1) shall be achieved by the Secretary of Commerce through fair and equitable increases in fees for services offered by the various programs of the National Oceanic and Atmospheric Administration.

(3) The Secretary of Commerce shall notify the Congress of any changes in fee schedules under section 409 of the Act of November 17, 1988 (15 U.S.C. 1534), before such changes take effect.

SEC. 10202. RADON MEASUREMENT PROFICIENCY.

Section 305(e) of the Toxic Substances Control Act is amended by adding at the end the following new paragraphs: 15 USC 2665.

"(5) RESEARCH.—The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

"(A) conducting comparisons among radon and radon progeny measurement techniques;

"(B) developing measurement protocols for different building types under varying operating conditions; and

"(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

"(i) provide information on the results of research conducted under this paragraph; and

"(ii) describe model State radon measurement and mitigation programs.

"(6) MANDATORY PROFICIENCY TESTING PROGRAM STUDY.—(A) The Administrator shall conduct a study to determine the feasibility of establishing a mandatory proficiency testing program that would require that—

"(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

"(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

"(B) The study shall also address procedures for—

"(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

"(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

"(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

"(7) USER FEE.—In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).".

SEC. 10203. DEPARTMENT OF ENERGY USER FEE STUDY.

The Secretary of Energy shall undertake a study of the Department of Energy's user fee assessment and collection practices, and shall make recommendations on ways to—

(1) reasonably increase revenues to the United States through user fees, consistent with the mission of the Department; and

(2) improve user fee collection practices.

The Secretary of Energy shall submit a report containing such findings and recommendations to the Congress within 6 months after the date of enactment of this Act. There are authorized to be appropriated to the Secretary of Energy for carrying out this section not to exceed $500,000 for fiscal year 1991, from funds otherwise available to the Department of Energy.

SEC. 10204. DEPARTMENT OF TRANSPORTATION COMMERCIAL SPACE LAUNCH STUDY.

(a) The Secretary of Transportation shall report on actions by the Department of Transportation for the assessment and collection of licensing fees under the Commercial Space Launch Act (49 U.S.C. App. 2601 et seq.).

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

SEC. 10205. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY COST RECOVERY STUDY.

(a) The Secretary of Commerce shall undertake a study of current practices at, and any suggested improvements consistent with the mission of, the National Institute of Standards and Technology for recovering the costs of services and materials provided to private and nonprofit organizations, including services provided on a proprietary basis to users of Institute facilities.

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

Subtitle D—Travel and Tourism Facilitation Fee

SEC. 10301. UNITED STATES TRAVEL AND TOURISM FACILITATION FEE.

(a) UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE.—The International Travel Act of 1961 (22 U.S.C. 2121 et seq.) is amended by adding at the end the following:

"SEC. 306. (a) To the extent not inconsistent with treaties or international agreements entered into by the United States, the Secretary, on a calendar quarterly basis beginning January 1, 1991, shall charge and collect from each commercial airline and passenger cruise ship line transporting passengers to the United States, a United States Travel and Tourism Administration Facilitation Fee, in an amount determined under subsection (b). 22 USC 2128.

"(b)(1) During the period from January 1, 1991, through December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(2) Commencing in 1991, the Secretary shall each year determine and publish the amount of the fee described in subsection (a) for the 12-month period commencing on January 1 of the succeeding calendar year, as follows:

"(A) The Secretary (in consultation with the Attorney General and the Secretary of State) shall estimate the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) expected to enter the United States during such succeeding calendar year, based upon the number of such aliens who entered the United States during the previous calendar year (as reported or estimated by the Attorney General) and such other available information as the Secretary deems reliable.

"(B) The Secretary shall divide the amount appropriated to the United States Travel and Tourism Administration for the fiscal year during which such determination is made by the number of aliens described in subparagraph (A) expected by the Secretary to enter the United States during the calendar year described in such subparagraph, as estimated by the Secretary under such subparagraph, and shall round the result up to the nearest quarter-dollar.

"(C) The Secretary shall publish in the Federal Register the estimate required by subparagraph (A), together with a description of the information supporting such estimate, and the amount of the fee determined under subparagraph (B) which shall be applicable during the 12-month period commencing on January 1 of the succeeding calendar year.

"(D) For each calendar quarter beginning after December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to the fee amount determined under subparagraph (B) and applicable under subparagraph (C) multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act

(8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(3) Neither the estimate of the Secretary under paragraph (2)(A) nor the amount determined by the Secretary under paragraph (2)(B) shall be subject to judicial review.

"(c) Each commercial airline and passenger cruise ship line shall remit the fee charged by the Secretary under subsection (b), in United States dollars, no later than 31 days after the close of the calendar quarter of the arrival of the aliens on which the calculation of the fee is based.

"(d) The Secretary shall deposit the fees received pursuant to subsection (c) in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

"(e) Beginning on October 1, 1992, the aggregate amounts collected for the fee charged under this section shall at least equal the appropriations made for the travel and tourism activities of the Secretary under this Act, but at no time shall the aggregate of amounts collected for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(f) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.".

(b) CIVIL PENALTIES AND ENFORCEMENT.—The International Travel Act of 1961, as amended by subsection (a), is amended by adding at the end the following:

22 USC 2129.

"SEC. 307. (a) Any commercial airline or commercial cruise ship line which is found by the Secretary or the Secretary's designee, after notice and an opportunity for a hearing, to have failed to pay to the Secretary, by the due date, the fee charged by the Secretary under section 306(a), may be ordered by the Secretary or the Secretary's designee to pay any fee amount outstanding plus interest on any late payment and, in addition, to pay a civil penalty not to exceed $5,000 for each day payment to the Secretary is not made or was made late. The amount of such civil penalty shall be assessed by the Secretary or the Secretary's designee by written notice. In determining the amount of such penalty, the Secretary or the Secretary's designee shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require. Each day a payment to the Secretary required by this Act is late shall constitute a separate violation of this Act.

"(b) If any commercial airline or cruise ship line fails to pay as ordered by the Secretary or the Secretary's designee, the Attorney General may, upon request of the Secretary, bring a civil action in any appropriate United States district court for the recovery of the amount ordered to be paid.

"(c) Before requesting the Attorney General to bring a civil action, the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under subsection (a).

"(d) For the purpose of conducting any hearing under subsection (a), the Secretary or the Secretary's designee may issue subpoenas for the attendance and testimony of witnesses and the production of

relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the United States district court for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or the Secretary's designee or to appear and produce papers, books, and documents before the Secretary or the Secretary's designee, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.".

Subtitle E—Coast Guard User Fees

SEC. 19401. ESTABLISHMENT AND COLLECTION OF FEES FOR COAST GUARD SERVICES.

(a) IN GENERAL.—Section 2110 of title 46, United States Code, is amended to read as follows:

"§ 2110. Fees

"(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

"(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this title that is more than $500 annually.

"(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

"(4) The Secretary may not collect a fee or charge under this subsection that is in conflict with the international obligations of the United States.

"(5) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

"(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1991, 1992, 1993, 1994, and 1995, from the owner or operator of each recreational vessel that is greater than 16 feet in length.

"(2) The fee or charge established under paragraph (1) of this subsection is as follows:

"(A) for vessels greater than 16 feet in length but less than 20 feet, not more than $25;

"(B) for vessels of at least 20 feet in length but less than 27 feet, not more than $35;

"(C) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

"(D) for vessels of at least 40 feet in length, not more than $100.

"(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

"(4) The fee or charge established under this subsection does not apply to a—

"(A) public vessel; or

"(B) vessel deemed to be a public vessel under section 827 of title 14.

"(c) In addition to the collection of fees and charges established under subsections (a) and (b), the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

"(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

"(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

"(B) shall provide appropriate accounting to the Secretary; and

"(C) may not institute litigation as part of that collection.

"(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

"(e) A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

"(f) When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

"(g) The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

"(h) Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(i) The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section.".

(b) CLERICAL AMENDMENT.—The analysis of chapter 21 of title 46, United States Code, is amended by striking the item relating to section 2110 and inserting the following:

"2110. Fees.".

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 pur-

poses", approved August 5, 1909,[76] (36 Stat. 111; 46 App. U.S.C. 121) is amended in the second paragraph—

(1) by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year," and inserting "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, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter";

(2) by inserting after "Newfoundland," the following: "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,"; and

(3) by striking "six cents per ton, not to exceed thirty cents per ton per annum," and inserting "27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter".

(b) CONFORMING AMENDMENT.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year" and inserting "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, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter".

(c) OFFSETTING RECEIPTS.—Increased tonnage charges collected as a result of the amendments made by subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities. 46 USC app. 121 note.

Subtitle F—Railroad User Fees

SEC. 10501. AMENDMENTS TO FEDERAL RAILROAD SAFETY ACT OF 1970.

(a) USER FEES.—The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

"SEC. 216. USER FEES. 45 USC 447.

"(a)(1) The Secretary shall establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads.

"(2) The Secretary shall establish procedures for the collection of such fees. The Secretary may use the services of any Federal, State, or local agency or instrumentality to collect such fees, and may reimburse such agency or instrumentality a reasonable amount for such services.

"(3) Fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2).

[76] So in original. Probably should be "1909 (36".

"(b) The Secretary shall assess and collect fees described in subsection (a) with respect to each fiscal year before the end of such fiscal year.

"(c) All fees collected under subsection (b) shall be deposited into the general fund of the United States Treasury as offsetting receipts and shall be used, to the extent provided in advance in appropriations Acts, only to carry out activities under this Act.

"(d) Fees established under subsection (a) shall be assessed in an amount sufficient to cover activities described in subsection (c) beginning on March 1, 1991, but at no time shall the aggregate of fees received for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(e)(1) Within 90 days after the end of each fiscal year in which fees are collected pursuant to this section, the Secretary shall report to the Congress—

"(A) the amount of fees collected during that fiscal year;

"(B) the impact of such fee collections on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

"(C) the total cost of Federal safety activities for each such other mode of transportation, including the portion of that total cost, if any, defrayed by Federal user fees.

"(2) With respect to any fiscal year for which the Secretary's report submitted under paragraph (1) finds—

"(A) any impact of fees collected under this section either on the financial health of the railroad industry, or on its competitive position relative to competing modes of transportation; or

"(B) any significant difference in the burden of Federal user fees borne by the railroad industry and those applicable to competing modes of transportation,

the Secretary shall, within 90 days after submission of such report, prepare and submit to the Congress specific recommendations for legislation to correct any such impact or difference.

"(f) This section shall expire on September 30, 1995.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this Act not to exceed $46,884,000 for fiscal year 1991.".

Revenue Reconciliation Act of 1990.

TITLE XI—REVENUE PROVISIONS

SEC. 11001. SHORT TITLE; ETC.

26 USC 1 note.

(a) SHORT TITLE.—This title may be cited as the "Revenue Reconciliation Act of 1990".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

26 USC 15 note.

(c) SECTION 15 NOT TO APPLY.—Except as otherwise expressly provided in this title, no amendment made by this title shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

TITLE XI—REVENUE PROVISIONS

Subtitle A—Individual Income Tax Provisions

PART I—PROVISIONS AFFECTING HIGH-INCOME INDIVIDUALS

SEC. 11101. ELIMINATION OF PROVISION REDUCING MARGINAL TAX RATE FOR HIGH-INCOME TAXPAYERS.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of the excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $26,050	15% of taxable income.
Over $26,050 but not over $67,200	$3,907.50, plus 28% of the excess over $26,500.
Over $67,200	$15,429.50, plus 31% of the excess over $67,200.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $19,450	15% of taxable income.
Over $19,450 but not over $47,050	$2,917.50, plus 28% of the excess over $19,450.
Over $47,050	$10,645.50, plus 31% of the excess over $47,050.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $16,225	15% of taxable income.
Over $16,225 but not over $39,200	$2,433.75, plus 28% of the excess over $16,225.
Over $39,200	$8,866.75, plus 31% of the excess over $39,200.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,300	15% of taxable income.
Over $3,300 but not over $9,900	$495, plus 28% of the excess over $3,300.
Over $9,900	$2,343, plus 31% of the excess over $9,900."

(b) REPEAL OF PHASEOUT.—

(1) IN GENERAL.—Section 1 is amended by striking subsection (g) (relating to phaseout of 15-percent rate and personal exemptions).

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) (relating to adjustments for inflation) is amended by striking "subsection (g)(4),".

(c) 28 PERCENT MAXIMUM CAPITAL GAINS RATE.—Subsection (j) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

"(j) MAXIMUM CAPITAL GAINS RATE.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount of the net capital gain, or

"(B) the amount of taxable income taxed at a rate below 28 percent, plus

"(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1)."

(d) TECHNICAL AMENDMENTS.—

(1)(A) Subsection (f) of section 1 is amended—

(i) by striking "1988" in paragraph (1) and inserting "1990", and

(ii) by striking "1987" in paragraph (3)(B) and inserting "1989".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1987" and inserting "1989".

(C) Subparagraph (C) of section 41(e)(5) is amended—

(i) by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end of clause (i),

(ii) by striking "1987" in clause (ii) and inserting "1989", and

(iii) by adding at the end of clause (ii) the following new sentence: "Such substitution shall be in lieu of the substitution under clause (i).".

(D) Subparagraph (B) of section 63(c)(4) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(E) Clause (ii) of section 135(b)(2)(B) is amended by striking ", determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof".

(F) Subparagraph (B) of section 151(d)(3) is amended by striking "1987" and inserting "1989".

(G) Clause (ii) of section 513(h)(2)(C) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(2) Section 1 is amended by striking subsection (h) and redesignating subsections (i) and (j) as subsections (g) and (h), respectively.

(3) Subsection (j) of section 59 is amended—

(A) by striking "section 1(i)" each place it appears and inserting "section 1(g)", and

(B) by striking "section 1(i)(3)(B)" in paragraph (2)(C) and inserting "section 1(g)(3)(B)".

(4) Paragraph (4) of section 691(c) is amended by striking "1(j)" and inserting "1(h)".

(5)(A) Clause (i) of section 904(b)(3)(D) is amended by striking "subsection (j)" and inserting "subsection (h)".

(B) Subclause (I) of section 904(b)(3)(E)(iii) is amended by striking "section 1(j)" and inserting "section 1(h)".

(6) Clause (iv) of section 6103(e)(1)(A) is amended by striking "section 1(j)" and inserting "section 1(g)".

(7)(A) Subparagraph (A) of section 7518(g)(6) is amended by striking "1(j)" and inserting "1(h)".

(B) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking "1(j)" and inserting "1(h)". 46 USC app. 1177.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990. 26 USC 1 note.

SEC. 11102. INCREASE IN RATE OF INDIVIDUAL ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subparagraph (A) of section 55(b)(1) (relating to tentative minimum tax) is amended by striking "21 percent" and inserting "24 percent".

26 USC 55 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1990.

SEC. 11103. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 68. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

"(a) GENERAL RULE.—In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

"(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

"(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

"(b) APPLICABLE AMOUNT.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable amount' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

"(2) INFLATION ADJUSTMENTS.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof."

"(c) EXCEPTION FOR CERTAIN ITEMIZED DEDUCTIONS.—For purposes of this section, the term 'itemized deductions' does not include—

"(1) the deduction under section 213 (relating to medical, etc. expenses),

"(2) any deduction for investment interest (as defined in section 163(d)), and

"(3) the deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165.

"(d) COORDINATION WITH OTHER LIMITATIONS.—This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

"(e) EXCEPTION FOR ESTATES AND TRUSTS.—This section shall not apply to any estate or trust.

"(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 1995."

(b) COORDINATION WITH MINIMUM TAX.—Paragraph (1) of section 56(b) is amended by adding at the end thereof the following new subparagraph:

"(F) SECTION 68 NOT APPLICABLE.—Section 68 shall not apply."

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) is amended by inserting "section 68(b)(2)" after "section 63(c)(4),".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding a [77] the end thereof the following new item:

"Sec. 68. Overall limitation on itemized deductions."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990. 26 USC 1 note.

SEC. 11104. PHASEOUT OF PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Subsection (d) of section 151 is amended to read as follows:

"(d) EXEMPTION AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'exemption amount' means $2,000.

"(2) EXEMPTION AMOUNT DISALLOWED IN CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

"(3) PHASEOUT.—

"(A) IN GENERAL.—In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$1,250' for '$2,500'. In no event shall the applicable percentage exceed 100 percent.

"(C) THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'threshold amount' means—

"(i) $150,000 in the case of a joint of a return or a surviving spouse (as defined in section 2(a)),

"(ii) $125,000 in the case of a head of a household (as defined in section 2(b) [78],

"(iii) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household, and

"(iv) $75,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(D) COORDINATION WITH OTHER PROVISIONS.—The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

"(E) TERMINATION.—This paragraph shall not apply to any taxable year beginning after December 31, 1995.

"(4) INFLATION ADJUSTMENTS.—

"(A) ADJUSTMENT TO BASIC AMOUNT OF EXEMPTION.—In the case of any taxable year beginning in a calendar year

[77] So in original. Probably should be "at".
[78] So in original. Probably should be "2(b))".

after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1989' in subparagraph (B) thereof.

"(B) ADJUSTMENT TO THRESHOLD AMOUNTS FOR YEARS AFTER 1991.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 1(f) is amended—

(1) by striking "section 151(d)(3)" in subparagraph (A) and inserting "section 151(d)(4)", and

(2) by striking "section 151(d)(3)" in subparagraph (B) and inserting "section 151(d)(4)(A)".

26 USC 1 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

PART II—MODIFICATIONS OF EARNED INCOME CREDIT

SEC. 11111. MODIFICATIONS OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—So much of section 32 (relating to earned income credit) as precedes subsection (d) thereof is amended to read as follows:

"SEC. 32. EARNED INCOME.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) the basic earned income credit, and

"(2) the health insurance credit.

"(b) COMPUTATION OF CREDIT.—For purposes of this section—

"(1) BASIC EARNED INCOME CREDIT.—

"(A) IN GENERAL.—The term 'basic earned income credit' means an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed $5,714.

"(B) LIMITATION.—The amount of the basic earned income credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of—

"(i) the credit percentage of $5,714, over

"(ii) the phaseout percentage of so much of the adjusted gross income (or, if greater the earned income) of the taxpayer for the taxable year as exceeds $9,000.

"(C) PERCENTAGES.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the percentages shall be determined as follows:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	23	16.43
2 or more qualifying children	25	17.86

"(ii) TRANSITION PERCENTAGES.—

"(I) For taxable years beginning in 1991, the percentages are:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	16.7	11.93
2 or more qualifying children	17.3	12.36

"(II) For taxable years beginning in 1992, the percentages are:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	17.6	12.57
2 or more qualifying children	18.4	13.14

"(III) For taxable years beginning in 1993, the percentages are:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	18.5	13.21
2 or more qualifying children	19.5	13.93

"(D) SUPPLEMENTAL YOUNG CHILD CREDIT.—In the case of a taxpayer with a qualifying child who has not attained age 1 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends—

"(i) the credit percentage shall be increased by 5 percentage points, and

"(ii) the phaseout percentage shall be increased by 3.57 percentage points.

If the taxpayer elects to take a child into account under this subparagraph, such child shall not be treated as a qualifying individual under section 21.

"(2) HEALTH INSURANCE CREDIT.—

"(A) IN GENERAL.—The term 'health insurance credit' means an amount determined in the same manner as the basic earned income credit except that—

"(i) the credit percentage shall be equal to 6 percent, and

"(ii) the phaseout percentage shall be equal to 4.285 percent.

"(B) LIMITATION BASED ON HEALTH INSURANCE COSTS.—The amount of the health insurance credit determined under subparagraph (A) for any taxable year shall not exceed the amounts paid by the taxpayer during the taxable year for insurance coverage—

"(i) which constitutes medical care (within the meaning of section 213(d)(1)(C)), and

"(ii) which includes at least 1 qualifying child.

For purposes of this subparagraph, the rules of section 213(d)(6) shall apply.

"(C) SUBSIDIZED EXPENSES.—A taxpayer may not take into account under subparagraph (B) any amount to the extent that—

"(i) such amount is paid, reimbursed, or subsidized by the Federal Government, a State or local government, or any agency or instrumentality thereof; and

"(ii) the payment, reimbursement, or subsidy of such amount is not includible in the gross income of the recipient.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.

"(B) QUALIFYING CHILD INELIGIBLE.—If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

"(C) 2 OR MORE ELIGIBLE INDIVIDUALS.—If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child.

"(D) EXCEPTION FOR INDIVIDUAL CLAIMING BENEFITS UNDER SECTION 911.—The term 'eligible individual' does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

"(2) EARNED INCOME.—

"(A) The term 'earned income' means—

"(i) wages, salaries, tips, and other employee compensation, plus

"(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

"(B) For purposes of subparagraph (A)—

"(i) the earned income of an individual shall be computed without regard to any community property laws,

"(ii) no amount received as a pension or annuity shall be taken into account, and

"(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

"(3) QUALIFYING CHILD.—

"(A) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

"(i) who bears a relationship to the taxpayer described in subparagraph (B),

"(ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

"(iii) who meets the age requirements of subparagraph (C), and

"(iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).

"(B) RELATIONSHIP TEST.—

"(i) IN GENERAL.—An individual bears a relationship to the taxpayer described in this subparagraph if such individual is—

"(I) a son or daughter of the taxpayer, or a descendant of either,

"(II) a stepson or stepdaughter of the taxpayer, or

"(III) an eligible foster child of the taxpayer.

"(ii) MARRIED CHILDREN.—Clause (i) shall not apply to any individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for paragraph (2) or (4) of section 152(e)).

"(iii) ELIGIBLE FOSTER CHILD.—For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i) (I) or (II) who—

"(I) the taxpayer cares for as the taxpayer's own child, and

"(II) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

"(iv) ADOPTION.—For purposes of this subparagraph, a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child by blood.

"(C) AGE REQUIREMENTS.—An individual meets the requirements of this subparagraph if such individual—

"(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins,

"(ii) is a student (as defined in section 151(c)(4)) who has not attained the age of 24 as of the close of such calendar year, or

"(iii) is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year.

"(D) IDENTIFICATION REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if—

"(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

"(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.

"(ii) INSURANCE POLICY NUMBER.—In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy

number or other adequate evidence of insurance in addition to any information required to be included in clause (i).

"(iii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i) or (ii).

"(E) ABODE MUST BE IN THE UNITED STATES.—The requirements of subparagraphs (A)(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States."

(b) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—Section 32 is amended by adding at the end thereof the following new subsection:

"(j) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

"(1) the United States Housing Act of 1937,

"(2) title V of the Housing Act of 1949,

"(3) section 101 of the Housing and Urban Development Act of 1965,

"(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

"(5) the Food Stamp Act of 1977,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month)."

(c) ADVANCE PAYMENT OF CREDIT.—Subparagraphs (B) and (C) of section 3507(c)(2) are amended to read as follows:

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than the credit percentage under section 32(b)(1) (without regard to subparagraph (D) thereof) for an eligible individual with 1 qualifying child and with earned income not in excess of the amount of earned income taken into account under section 32(a)(1), which

"(ii) phases out between the amount of earned income at which the phaseout begins under section 32(b)(1)(B)(ii) and the amount of income at which the credit under section 32(a)(1) phases out for an eligible individual with 1 qualifying child, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit as if it were a credit determined under subparagraph (B) by substituting ½ of the amounts of earned income described in such subparagraph for such amounts."

(d) COORDINATION WITH DEDUCTIONS.—

(1) MEDICAL DEDUCTION.—Section 213 is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH HEALTH INSURANCE CREDIT UNDER SECTION 32.—The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(2) SELF-EMPLOYED INDIVIDUALS.—Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION, ETC.—

"(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(e) CONFORMING AMENDMENTS.—Paragraph (2) of section 32(i) is amended—

(1) by striking "or (ii)" in subparagraph (A)(i) thereof,

(2) by striking "clause (iii)" in subparagraph (A)(ii) and inserting "clause (ii)", and

(3) by amending subparagraph (B) to read as follows:

"(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

"(i) the $5,714 dollar amounts contained in subsection (b)(1), and

"(ii) the $9,000 amount contained in subsection (b)(1)(B)(ii)."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990. 26 USC 32 note.

SEC. 11112. REQUIREMENT OF IDENTIFYING NUMBER FOR CERTAIN DEPENDENTS.

(a) GENERAL RULE.—Paragraph (2) of section 6109(e) (relating to furnishing number for certain dependents) is amended by striking "2 years" and inserting "1 year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns for taxable years beginning after December 31, 1990. 26 USC 6109 note.

SEC. 11113. STUDY OF ADVANCE PAYMENTS. 26 USC 3507 note.

(a) IN GENERAL.—The Comptroller General of the United States shall, in consultation with the Secretary of the Treasury, conduct a study of advance payments required by section 3507 of the Internal Revenue Code of 1986 to determine—

(1) the effectiveness of the advance payment system (including an analysis of why so few employees take advantage of such system), and

(2) the manner in which such system can be implemented to alleviate administrative complexity, if any, for small business, and

(3) if there are any other problems in the administration of such system.

(b) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller shall report the results of the study conducted under subsection (a), together with any recommendations, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the House of Representatives.

26 USC 21 note.

SEC. 11114. PROGRAM TO INCREASE PUBLIC AWARENESS.

Not later than the first calendar year following the date of the enactment of this subtitle, the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section.

SEC. 11115. EXCLUSION FROM INCOME AND RESOURCES OF EARNED INCOME TAX CREDIT UNDER TITLES IV, XVI, AND XIX OF THE SOCIAL SECURITY ACT.

(a) EXCLUSIONS UNDER TITLE IV.—

(1) EXCLUSIONS FROM RESOURCES.—Section 402(a)(7)(B) of the Social Security Act (42 U.S.C. 602(a)(7)(B)) is amended—

(A) by striking "or" before "(iii)"; and

(B) by inserting ", or (iv) for the month of receipt and the following month, any refund of Federal income taxes made to such family by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit), and any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit)" before the semicolon.

(2) EXCLUSIONS FROM INCOME.—Section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)) is amended by inserting "or 8(A)(viii)" after "other than paragraph 8(A)(v)".

(b) EXCLUSIONS UNDER TITLE XVI.—

(1) EXCLUSIONS FROM INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)), as amended by sections 5031(a) and 5035(a) of this Act, is amended—

(A) by striking "and" at the end of paragraph (17);

(B) by striking the period at the end of paragraph (18) and inserting "; and"; and

(C) by adding at the end the following:

"(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).".

(2) EXCLUSIONS FROM RESOURCES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)), as amended by sections 5031(b) and 5035(b) of this Act, is amended—

(A) by striking "and" at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(10) for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under

section 3507 of such Code (relating to advance payment of earned income credit).".

(c) EXCLUSIONS UNDER TITLE XIX.—Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code (relating to advance payment of earned income credit). 42 USC 1396a note.

(d) AFDC WAIVER OF OVERPAYMENT.—For the purposes of section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)), a State agency designated under a State plan under section 402(a)(3) of such Act may waive any overpayment of aid that resulted from the receipt by a family of a refund of Federal income taxes by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) or any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit) during the period beginning on January 1, 1990, and ending on December 31, 1990. 42 USC 602 note.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) though [79] (c) shall apply to determinations of income or resources made for any period after December 31, 1990. 42 USC 602 note.

SEC. 11116. COORDINATION WITH REFUND PROVISION. 31 USC 1324 note.

For purposes of section 1324(b)(2) of title 31 of the United States Code, section 32 of the Internal Revenue Code of 1986 (as amended by this Act) shall be considered to be a credit provision of the Internal Revenue Code of 1954 enacted before January 1, 1978.

Subtitle B—Excise Taxes

PART I—TAXES RELATED TO HEALTH AND THE ENVIRONMENT

SEC. 11201. INCREASE IN EXCISE TAXES ON DISTILLED SPIRITS, WINE, AND BEER.

(a) DISTILLED SPIRITS.—

(1) IN GENERAL.—Paragraphs (1) and (3) of section 5001(a) (relating to rate of tax on distilled spirits) are each amended by striking "$12.50" and inserting "$13.50".

(2) TECHNICAL AMENDMENT.—Paragraphs (1) and (2) of section 5010(a) (relating to credit for wine content and for flavors content) are each amended by striking "$12.50" and inserting "$13.50".

(b) WINE.—

(1) TAX INCREASES.—

(A) WINES CONTAINING NOT MORE THAN 14 PERCENT ALCOHOL.—Paragraph (1) of section 5041(b) (relating to rates of tax on wines) is amended by striking "17 cents" and inserting "$1.07".

(B) WINES CONTAINING MORE THAN 14 (BUT NOT MORE THAN 21) PERCENT ALCOHOL.—Paragraph (2) of section

[79] So in original. Probably should be "through".

5041(b) is amended by striking "67 cents" and inserting "$1.57".

(C) WINES CONTAINING MORE THAN 21 (BUT NOT MORE THAN 24) PERCENT ALCOHOL.—Paragraph (3) of section 5041(b) is amended by striking "$2.25" and inserting "$3.15".

(D) ARTIFICIALLY CARBONATED WINES.—Paragraph (5) of section 5041(b) is amended by striking "$2.40" and inserting "$3.30".

(2) CREDIT FOR SMALL DOMESTIC PRODUCERS.—Section 5041 is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) CREDIT FOR SMALL DOMESTIC PRODUCERS.—

"(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States.

"(2) REDUCTION IN CREDIT.—The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

"(3) TIME FOR DETERMINING AND ALLOWING CREDIT.—The credit allowable by paragraph (1)—

"(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

"(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

"(4) CONTROLLED GROUPS.—Rules similar to rules of section 5051(a)(2)(B) shall apply for purposes of this subsection.

"(5) DENIAL OF DEDUCTION.—Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

"(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year and to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

(3) CONFORMING AMENDMENT.—Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(c) BEER.—

(1) IN GENERAL.—Paragraph (1) of section 5051(a) (relating to imposition and rate of tax on beer) is amended by striking "$9" and inserting "$18".

(2) REGULATIONS.—Paragraph (2) of section 5051(a) is amended by adding at the end thereof the following new subparagraph:

"(C) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the reduced

rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991. 26 USC 5001 note.

(e) FLOOR STOCKS TAXES.— 26 USC 5001 note.

(1) IMPOSITION OF TAX.—

(A) IN GENERAL.—In the case of any tax-increased article—

(i) on which tax was determined under part I of subchapter A of chapter 51 of the Internal Revenue Code of 1986 or section 7652 of such Code before January 1, 1991, and

(ii) which is held on such date for sale by any person, there shall be imposed a tax at the applicable rate on each such article.

(B) APPLICABLE RATE.—For purposes of subparagraph (A), the applicable rate is—

(i) $1 per proof gallon in the case of distilled spirits,

(ii) $0.90 per wine gallon in the case of wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and

(iii) $9 per barrel in the case of beer.

In the case of a fraction of a gallon or barrel, the tax imposed by subparagraph (A) shall be the same fraction as the amount of such tax imposed on a whole gallon or barrel.

(C) TAX-INCREASED ARTICLE.—For purposes of this subsection, the term "tax-increased article" means distilled spirits, wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and beer.

(2) EXCEPTION FOR SMALL DOMESTIC PRODUCERS.—

(A) In the case of wine held by the producer thereof on January 1, 1991, if a credit would have been allowable under section 5041(c) of such Code (as added by this section) on such wine had the amendments made by subsection (b) applied to all wine removed during 1990 and had the wine so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such wine shall be reduced by the credit which would have been so allowable.

(B) In the case of beer held by the producer thereof on January 1, 1991, if the rate of the tax imposed by section 5051 of such Code would have been determined under subsection (a)(2) thereof had the beer so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such beer shall not apply.

(C) For purposes of this paragraph, an article shall not be treated as held by the producer if title thereto had at any time been transferred to any other person.

(3) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on tax-increased articles held on January 1, 1991, by any dealer if—

(A) the aggregate liquid volume of tax-increased articles held by such dealer on such date does not exceed 500 wine gallons, and

(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information

as the Secretary shall require for purposes of this paragraph.

(4) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to—

(A) $240 to the extent such taxes are attributable to distilled spirits,

(B) $270 to the extent such taxes are attributable to wine, and

(C) $87 to the extent such taxes are attributable to beer.

Such credit shall not exceed the amount of taxes imposed by paragraph (1) with respect to distilled spirits, wine, or beer, as the case may be, for which the dealer is liable.

(5) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding any tax-increased article on January 1, 1991, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1991.

(6) CONTROLLED GROUPS.—

(A) CORPORATIONS.—In the case of a controlled group—

(i) the 500 wine gallon amount specified in paragraph (3), and

(ii) the $240, $270, and $87 amounts specified in paragraph (4),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

(7) OTHER LAWS APPLICABLE.—

(A) IN GENERAL.—All provisions of law, including penalties, applicable to the comparable excise tax with respect to any tax-increased article shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by the comparable excise tax.

(B) COMPARABLE EXCISE TAX.—For purposes of subparagraph (A), the term "comparable excise tax" means—

(i) the tax imposed by section 5001 of such Code in the case of distilled spirits,

(ii) the tax imposed by section 5041 of such Code in the case of wine, and

(iii) the tax imposed by section 5051 of such Code in the case of beer.

(8) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Terms used in this subsection which are also used in subchapter A of chapter 51 of such Code shall have the respective meanings such terms have in such part.

(B) PERSON.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(9) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—For purposes of this subsection, any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided by regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on January 1, 1991, on the premises of a retail establishment.

SEC. 11202. INCREASE IN EXCISE TAXES ON TOBACCO PRODUCTS.

(a) CIGARS.—Subsection (a) of section 5701 is amended—

(1) by striking "75 cents per thousand" in paragraph (1) and inserting "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)", and

(2) by striking "equal to" and all that follows in paragraph (2) and inserting "equal to—

"(A) 10.625 percent of the price for which sold but not more than $25 per thousand on cigars removed during 1991 or 1992, and

"(B) 12.75 percent of the price for which sold but not more than $30 per thousand on cigars removed after 1992."

(b) CIGARETTES.—Subsection (b) of section 5701 is amended—

(1) by striking "$8 per thousand" in paragraph (1) and inserting "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992)", and

(2) by striking "$16.80 per thousand" in paragraph (2) and inserting "$25.20 per thousand ($21 per thousand on cigarettes removed during 1991 or 1992)".

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 is amended by striking "½ cent" and inserting "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)".

(d) CIGARETTE TUBES.—Subsection (d) of section 5701 is amended by striking "1 cent" and inserting "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)".

(e) SMOKELESS TOBACCO.—Subsection (e) of section 5701 is amended—

(1) by striking "24 cents" in paragraph (1) and inserting "36 cents (30 cents on snuff removed during 1991 or 1992)", and

(2) by striking "8 cents" in paragraph (2) and inserting "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)".

(f) PIPE TOBACCO.—Subsection (f) of section 5701 is amended by striking "45 cents" and inserting "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)".

(g) DETERMINATION OF PRICE.—Subsection (m) of section 5702 is amended to read as follows:

"(m) DETERMINATION OF PRICE ON CIGARS.—In determining price for purposes of section 5701(a)(2)—

"(1) there shall be included any charge incident to placing the article in condition ready for use,

"(2) there shall be excluded—

"(A) the amount of the tax imposed by this chapter or section 7652, and

"(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(3) rules similar to the rules of section 4216(b) shall apply."

26 USC 5701 note.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to articles removed after December 31, 1990.

26 USC 5701 note.

(i) FLOOR STOCKS TAXES ON CIGARETTES.—

(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax-increase date and held on such date for sale by any person, there shall be imposed the following taxes:

(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $2 per thousand.

(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, $4.20 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(2) EXCEPTION FOR CERTAIN AMOUNTS OF CIGARETTES.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on cigarettes held on any tax-increase date by any person if—

(i) the aggregate number of cigarettes held by such person on such date does not exceed 30,000, and

(ii) such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

For purposes of this subparagraph, in the case of cigarettes measuring more than 6½ inches in length, each 2¾ inches (or fraction thereof) of the length of each shall be counted as one cigarette.

(B) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax-increase date by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the 30,000 amount in subparagraph (A) and the $60 amount in paragraph (3) with respect to such person.

(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $60. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax-increase date to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the 1st June 30 following the tax-increase date.

(5) DEFINITIONS.—For purposes of this subsection—

(A) TAX-INCREASE DATE.—The term "tax-increase date" means January 1, 1991, and January 1, 1993.

(B) OTHER DEFINITIONS.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(6) CONTROLLED GROUPS.—Rules similar to the rules of section 11201(e)(6) shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701.

SEC. 11203. ADDITIONAL CHEMICALS SUBJECT TO TAX ON OZONE-DEPLETING CHEMICALS.

(a) GENERAL RULE.—

(1) The table set forth in section 4682(a)(2) (defining ozone-depleting chemical) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride	Tetrachloromethane
Methyl chloroform	1,1,1-trichloroethane
CFC-13	CF_3Cl
CFC-111	C_2FCl_5
CFC-112	$C_2F_2Cl_4$
CFC-211	C_3FCl_7
CFC-212	$C_3F_2Cl_6$
CFC-213	$C_3F_3Cl_5$
CFC-214	$C_3F_4Cl_4$
CFC-215	$C_3F_5Cl_3$
CFC-216	$C_3F_6Cl_2$
CFC-217	C_3F_7Cl."

(2) The table set forth in section 4682(b) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride	1.1
Methyl chloroform	0.1
CFC-13	1.0
CFC-111	1.0
CFC-112	1.0
CFC-211	1.0
CFC-212	1.0
CFC-213	1.0
CFC-214	1.0
CFC-215	1.0
CFC-216	1.0
CFC-217	1.0."

(b) SEPARATE APPLICATION OF EXPORT CREDIT LIMIT FOR NEWLY LISTED CHEMICALS.—Paragraph (3) of section 4682(d) is amended by adding at the end thereof the following new subparagraph:

"(C) SEPARATE APPLICATION OF LIMIT FOR NEWLY LISTED CHEMICALS.—

"(i) IN GENERAL.—Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

"(ii) APPLICATION TO NEWLY LISTED CHEMICALS.—In applying subparagraph (B) to newly listed chemicals—

"(I) subparagraph (B) shall be applied by substituting '1989' for '1986' each place it appears, and

"(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

"(iii) NEWLY LISTED CHEMICAL.—For purposes of this subparagraph, the term 'newly listed chemical' means any substance which appears in the table contained in subsection (a)(2) below Halon-2402."

(c) SEPARATE BASE TAX AMOUNT FOR NEWLY LISTED CHEMICALS.—Subparagraphs (B) and (C) of section 4681(b)(1) are amended to read as follows:

"(B) BASE TAX AMOUNT.—

"(i) INITIALLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1995 with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C)) is the amount determined under the following table for such calendar year:

"Calendar Year	Base Tax Amount
1990 or 1991	$1.37
1992	1.67
1993 or 1994	2.65.

"(ii) NEWLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical which is a newly listed chemical (as so defined) is the amount determined under the following table for such calendar year:

"Calendar Year	Base Tax Amount
1991 or 1992	$1.37
1993	1.67
1994	3.00
1995	3.10.

"(C) BASE TAX AMOUNT FOR LATER YEARS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the base tax amount for such last year increased by 45 cents for each year after such last year."

(d) OTHER AMENDMENTS.—

(1) The last sentence of section 4682(c)(2) is amended by inserting "(other than methyl chloroform)" after "ozone-depleting chemical".

(2) Paragraph (3) of section 4682(h) is amended by striking "April 1" and inserting "June 30".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991. 26 USC 4681 note.

(f) DEPOSITS FOR 1ST QUARTER OF 1991.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) shall be required to be made before April 1, 1991. 26 USC 4682 note.

PART II—USER-RELATED TAXES

SEC. 11211. INCREASE AND EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUND.

(a) INCREASE IN TAX ON GASOLINE.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to rate of tax) is amended—

(A) by striking "and" at the end of clause (i),

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause:

"(iii) the deficit reduction rate."

(2) RATES OF TAX.—Subparagraph (B) of section 4081(a)(2) is amended—

(A) by striking "9 cents a gallon, and" and inserting "11.5 cents a gallon,",

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause:

"(iii) the deficit reduction rate is 2.5 cents a gallon."

(3) TERMINATION OF DEFICIT REDUCTION RATE.—Subsection (d) of section 4081 is amended by adding at the end thereof the following new paragraph:

"(3) DEFICIT REDUCTION RATE—On and after October 1, 1995, the deficit reduction rate under subsection (a)(2) shall not apply."

(4) 15-CENT TAX ON GASOLINE USED IN NONCOMMERCIAL AVIATION.—Paragraph (3) of section 4041(c) is amended—

(A) by striking "12 cents" and inserting "15 cents", and

(B) by striking "the Highway Trust Fund financing rate" and inserting "the sum of the Highway Trust Fund financing rate plus the deficit reduction rate".

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4081(c) is amended—

(i) by striking "applied by" and all that follows through "in the case" and inserting "applied by substituting rates which are 10/9th of the otherwise applicable rates in the case", and

(ii) by adding at the end thereof the following: "For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon."

(B) Paragraph (2) of section 4081(c) is amended by striking "at a rate equivalent to 3 cents" and inserting "at a Highway Trust Fund financing rate equivalent to 6.1 cents".

(C) Subsection (c) of section 4081 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) LOWER RATE ON GASOHOL MADE OTHER THAN FROM ETHANOL.—In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting '5.5 cents' for '6.1 cents'.

(D) Subparagraph (B) of section 9503(b)(4) is amended by striking "4081" and inserting "4041, 4081,".

(E) Subparagraph (A) of section 9503(c)(2) is amended by adding at the end thereof the following new sentence: "The amounts payable from the Highway Trust Fund under this subparagraph or paragraph (3) shall be determined by taking into account only the Highway Trust Fund financing rate applicable to any fuel."

(F) Subsection (b) of section 9503 is amended by adding at the end thereof the following new paragraph:

"(5) GENERAL REVENUE DEPOSITS OF CERTAIN TAXES ON ALCOHOL MIXTURES.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under subparagraphs (A), (E), and (F) of paragraph (1) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of gasoline or diesel fuel used in producing a mixture described in subparagraph (A)."

26 USC 4041 note.

(6) EFFECTIVE DATE.—Except as otherwise provided in this subsection, the amendments made by this subsection shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986) after November 30, 1990.

(b) INCREASE IN OTHER TAXES.—

(1) DEFICIT REDUCTION RATE.—

(A) Clause (i) of section 4091(b)(1)(A) is amended by inserting "and the diesel fuel deficit reduction rate" after "financing rate".

(B) Subsection (b) of section 4091 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) DIESEL FUEL DEFICIT REDUCTION RATE.—For purposes of paragraph (1), except as provided in subsection (c), the diesel fuel deficit reduction rate is 2.5 cents per gallon."

(C) Paragraph (6) of section 4091(b), as redesignated by subparagraph (A), is amended by adding at the end thereof the following new subparagraph:

"(D) The diesel fuel deficit reduction rate shall not apply on and after October 1, 1995."

(2) INCREASE IN HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (2) of section 4091(b) is amended by striking "15 cents" and inserting "17.5 cents".

(3) INCREASE IN TAX ON SPECIAL MOTOR FUELS.—Paragraph (2) of section 4041(a) is amended by striking "of 9 cents a gallon" and by inserting at the end thereof the following new sentence: "The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use."

(4) DEFICIT REDUCTION TAX TO APPLY TO FUEL USED IN TRAINS.—

(A) Paragraph (2) of section 4093(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel sold for use in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(B)(i) Subsection (l) of section 6427 is amended by adding at the end thereof the following new paragraph:

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(ii) Paragraph (1) of section 6427(l) is amended by striking "paragraph (3)" and inserting "paragraphs (3) and (4)".

(5) INCREASES IN TAXES NOT TO APPLY TO CERTAIN BUSES.—Subparagraph (A) of section 6427(b)(2) is amended by striking "shall not exceed 12 cents" and inserting "shall be 3.1 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4091, as the case may be".

(6) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4091(c) is amended—

(i) by striking "9 cents" and inserting "12.1 cents" and by striking "10 cents" and inserting "13.44 cents", and

(ii) by striking "shall be 1/9 cent per gallon" and inserting "and the diesel fuel deficit reduction rate shall be 10/9th of the otherwise applicable such rates".

(B) Paragraph (2) of section 4091(c) is amended by striking "9 cents" and inserting "12.1 cents".

(C)(i) Paragraph (1) of section 4041(a) is amended by striking "of 15 cents a gallon" and by inserting before the last sentence the following new sentence:

"The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

(ii) Subsection (a) of section 4041 is amended by striking paragraph (3).

(D) Clause (i) of section 4041(b)(2)(A) is amended to read as follows:

"(i) the Highway Trust Fund financing rate applicable under subsection (a)(2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and".

(E)(i) Paragraph (1) of section 4041(k) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

"(A) the Highway Trust Fund financing rates under paragraphs (1) and (2) of subsection (a) shall be the comparable rates under sections 4081(c) and 4091(c), as the case may be,

"(B) no tax shall be imposed by subsection (c)(1), and

"(C) no tax shall be imposed by subsection (c)(2)."

(ii) Subsection (q) of section 6427 is amended to read as follows:

"(q) GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

"(1) any tax is imposed by section 4081 at a rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(2) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasohol an amount equal to 1.4 cents (2 cents in the case of a mixture none of the alcohol in which consists of ethanol) multiplied by the number of gallons of gasohol so used."

(F) Subparagraph (A) of section 4041(m)(1) is amended to read as follows:

"(A) under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and".

(G) Subsection (d) of section 9502 is amended by adding at the end thereof the following new paragraph:

"(4) TRANSFERS FOR REFUNDS AND CREDITS NOT TO EXCEED TRUST FUND REVENUES ATTRIBUTABLE TO FUEL USED.—The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used."

(H) Subparagraph (D) of section 9503(c)(4) is amended by striking "(to the extent attributable to the Highway Trust Fund financing rate)" and by inserting before the period ", but only to the extent such taxes are attributable to the Highway Trust Fund financing rates under such sections".

26 USC 4041 note.

(7) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(c) EXTENSION OF TAXES.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(2) Section 4071(d) (relating to tax on tires and tread rubber).

(3) Section 4081(d)(1) (relating to gasoline tax).

(4) Section 4091(b)(6)(A) (relating to diesel fuel tax), as redesignated by subsection (b).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(d) EXTENSION OF EXEMPTIONS.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4041(f)(3) (relating to exemptions for farm use).

(2) Section 4041(g) (relating to other exemptions).

(3) Section 4221(a) (relating to certain tax-free sales).

(4) Section 4483(g) (relating to termination of exemptions for highway use tax).

(5) Section 6420(h) (relating to gasoline used on farms).

(6) Section 6421(i) (relating to gasoline used for certain nonhighway purposes, etc.).

(7) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(8) Section 6427(o) (relating to fuels not used for taxable purposes).

(e) EXTENSION OF REDUCED RATES OF TAX ON FUELS CONTAINING ALCOHOL.—The following provisions are each amended by striking "1993" each place it appears and inserting "2000":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(k)(3) (relating to fuels containing alcohol).

(3) Section 4081(c)(5) (relating to gasoline mixed with alcohol), as redesignated by subsection (a).

(4) Subsections (c)(3) and (d)(3) of section 4091 (relating to diesel fuel and aviation fuel mixed with alcohol and aviation fuel used to produce certain alcohol fuels).

(f) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Section 6412(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Section 6156(e)(2) (relating to installment payments of tax on use of highway motor vehicles) is amended by striking "1993" and inserting "1995".

(g) EXTENSION OF DEPOSITS INTO TRUST FUND.—

(1) IN GENERAL.—Subsection (b), and paragraphs (2), (3), and (4) of subsection (c), of section 9503 (relating to the Highway Trust Fund) are each amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-11) is amended—

(A) by striking "1993" and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(h) INCREASE IN TRANSFERS TO MASS TRANSIT ACCOUNT.—

(1) IN GENERAL.—Paragraph (2) of section 9503(e) is amended by striking "1 cent" and inserting "1.5 cents".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to amounts attributable to taxes imposed on or after December 1, 1990. 26 USC 9503 note.

(i) TRANSFERS OF SMALL-ENGINE FUEL TAXES INTO SPORT FISH RESTORATION ACCOUNT.—

(1) IN GENERAL.—Section 9503(c) (relating to expenditures from highway trust fund) is amended by adding at the end thereof the following new paragraph:

"(5) TRANSFERS FROM THE TRUST FUND FOR SMALL-ENGINE FUEL TAXES.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before October 1, 1995.

"(B) SMALL-ENGINE FUEL TAXES.—For purposes of this paragraph, the term 'small-engine fuel taxes' means the taxes under section 4081 with respect to gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment, but only to the extent such taxes are attributable to the Highway Trust Fund financing rate under such section."

(2) CONFORMING AMENDMENT.—Section 9504(a)(2) (relating to accounts in aquatic resources trust fund) is amended by inserting "section 9503(c)(5)," after "section 9503(c)(4),".

(3) EXPENDITURES FOR COASTAL WETLANDS RESTORATION.—Section 9504(b)(2) (relating to expenditures from sport fish restoration account) is amended to read as follows:

"(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, for making expenditures—

"(A) to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on October 1, 1988), and

"(B) to carry out the purposes of any law which is substantially identical to S. 3252 of the 101st Congress, as introduced.

Amounts transferred to such account under section 9503(c)(5) may be used only for making expenditures described in subparagraph (B) of this paragraph."

26 USC 9503 note.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

26 USC 4081 note.

(j) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—In the case of—

(A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of such Code before December 1, 1990, and which is held on such date by any person, or

(B) diesel fuel on which no tax was imposed under section 4091 of such Code at the Highway Trust Fund financing rate before December 1, 1990, and which is held on such date by any person for use as a fuel in a train,

there is hereby imposed a floor stocks tax on such gasoline and diesel fuel.

(2) RATE OF TAX.—The rate of the tax imposed by paragraph (1) shall be—

(A) 5 cents per gallon in the case of fuel described in paragraph (1)(A), and

(B) 2.5 cents per gallon in the case of fuel described in paragraph (1)(B).

In the case of any fuel held for use in producing a mixture described in section 4081(c)(1) or section 4091(c)(1)(A) of such Code, subparagraph (A) shall be applied by substituting "6.22

cents" for "5 cents". If no alcohol in such mixture is ethanol, the preceding sentence shall be applied by substituting "5.56 cents" for "6.22 cents".

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding gasoline or diesel fuel on December 1, 1990, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before May 31, 1991.

(4) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Gasoline and diesel fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) GASOLINE.—The term "gasoline" has the meaning given such term by section 4082 of such Code.

(C) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4092 of such Code.

(D) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(5) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline or diesel fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

(6) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

(7) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

(i) on gasoline held on December 1, 1990, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

(ii) on diesel fuel held on December 1, 1990, by any person if the aggregate amount of diesel fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (5) or (6).

(C) CONTROLLED GROUPS.—For purposes of this paragraph, rules similar to the rules of paragraph (6) of section 11201(e) of this Act shall apply.

(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by para-

graph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.

(9) TRANSFER OF PORTION OF FLOOR STOCKS REVENUE TO HIGHWAY TRUST FUND.—For purposes of determining the amount transferred to the Highway Trust Fund, the tax imposed by paragraph (1) on fuel described in subparagraph (A) thereof shall be treated as imposed at a Highway Trust Fund financing rate to the extent of 2.5 cents per gallon.

SEC. 11212. IMPROVEMENTS IN ADMINISTRATION OF GASOLINE EXCISE TAX.

(a) IN GENERAL.—Paragraph (1) of section 4081(a) is amended to read as follows:

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of gasoline from any refinery,

"(ii) the removal of gasoline from any terminal,

"(iii) the entry into the United States of gasoline for consumption, use, or warehousing, and

"(iv) the sale of gasoline to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such gasoline under clause (i), (ii), or (iii).

"(B) EXCEPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS.—The tax imposed by this paragraph shall not apply to any removal or entry of gasoline transferred in bulk to a terminal if the person removing or entering the gasoline and the operator of such terminal are registered under section 4101."

(b) CHANGES IN REGISTRATION RULES.—

(1) IN GENERAL.—Section 4101 is amended to read as follows:

"SEC. 4101. REGISTRATION AND BOND.

"(a) REGISTRATION.—Every person required by the Secretary to register under this section with respect to the tax imposed by section 4081 or 4091 shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

"(b) BONDS AND LIENS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

"(A) give a bond in such sum as the Secretary determines appropriate, and

"(B) agree to the imposition of a lien—

"(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

"(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

"(2) RELEASE OR DISCHARGE OF LIEN.—If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

"(c) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Rules similar to the rules of section 4222(c) shall apply to registration under this section.

"(d) INFORMATION REPORTING.—The Secretary may require—

"(1) information reporting by any person registered under this section, and

"(2) information reporting by such other persons as the Secretary deems necessary to carry out this part."

(2) CLARIFICATION OF GENERAL REGISTRATION RULES.—Subsection (c) of section 4222 is amended—

(A) by striking "revoked or suspended" in the material preceding paragraph (1) and inserting "denied, revoked, or suspended",

(B) by striking "revocation or suspension" each place it appears and inserting "denial, revocation, or suspension", and

(C) by striking in the heading "REVOCATION OR SUSPENSION" and inserting "DENIAL, REVOCATION, OR SUSPENSION".

(3) DISCLOSURE PERMITTED OF REGISTRATION INFORMATION.—Subsection (k) of section 6103 is amended by adding at the end thereof the following new paragraph:

"(7) DISCLOSURE OF EXCISE TAX REGISTRATION INFORMATION.—To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose—

"(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

"(B) the registration status of any person."

(4) CONFORMING AMENDMENT.—Section 4093 is amended by striking subsection (e) (relating to special administrative rules) and by redesignating subsection (f) as subsection (e).

(c) CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new section:

"SEC. 4103. CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.

"In any case in which there is a willful failure to pay the tax imposed by section 4081 or 4091, each person—

"(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

"(2) who willfully causes the taxpayer to fail to pay such tax, shall be jointly and severally liable with the taxpayer for the tax to which such failure relates."

(d) REFUNDS IN CERTAIN CASES.—

(1) IN GENERAL.—Section 4081 is amended by adding at the end thereof the following new subsection:

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any gasoline establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such gasoline, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(2) DENIAL OF CREDITS.—Subsection (d) of section 6416 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e)."

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6724(d) is amended by striking "or" at the end of clause (x), by striking ", or subsection (e)," in clause (xi), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) section 4101(d) (relating to information reporting with respect to fuels taxes)."

(2) Subsection (a) of section 4081 is amended by striking paragraph (3).

(3) The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4103. Certain additional persons liable for tax where willful failure to pay."

26 USC 4081 note.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on July 1, 1991.

(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) shall take effect on December 1, 1990.

SEC. 11213. INCREASE AND EXTENSION OF AVIATION-RELATED TAXES AND TRUST FUND; REPEAL OF REDUCTION IN RATES.

(a) INCREASE IN RATES ON TRANSPORTATION.—

(1) TRANSPORTATION OF PERSONS.—Subsections (a) and (b) of section 4261 are each amended by striking "8 percent" and inserting "10 percent".

(2) TRANSPORTATION OF PROPERTY.—Subsection (a) of section 4271 is amended by striking "5 percent" and inserting "6.25 percent".

26 USC 4261 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date.

(b) INCREASE IN RATES ON FUEL.—

(1) IN GENERAL.—Paragraph (3) of section 4091(b) is amended—

(A) by striking "14 cents" and inserting "17.5 cents", and

(B) by inserting "except as provided in subsection (d)," after "paragraph (1),".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4041(c) is amended by striking "14 cents" and inserting "17.5 cents".

(B)(i) Subparagraph (B) of section 4041(k)(1), as amended by section 11211, is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d), and".

(ii) Subparagraph (B) of section 4041(m)(1) is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1)."

(C)(i) Paragraphs (1) and (2) of section 4091(d) are amended to read as follows:

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall be—

"(A) 4.1 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the aviation fuel in such mixture was not taxed under subparagraph (B), and

"(B) 4.56 cents per gallon in the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be ⅛ cent per gallon.

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at the Airport and Airway Trust Fund financing rate equivalent to 4.1 cents per gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel."

(ii) The heading for subsection (d) of section 4091 is amended by striking "EXEMPTION FROM" and inserting "REDUCED RATE OF".

(D) Section 4091 is amended by adding at the end thereof the following new subsection:

"(e) LOWER RATES OF TAX ON ALCOHOL MIXTURES NOT MADE FROM ETHANOL.—In the case of a mixture described in subsection (c)(1)(A)(i) or (d)(1)(A)(i) none of the alcohol in which is ethanol—

"(1) subsections (c)(1)(A) and (c)(2), and subsections (d)(1)(A) and (d)(2), shall each be applied by substituting rates which are 0.6 cents less than the rates contained therein, and

"(2) subsections (c)(1)(B) and (d)(1)(B) shall be applied by substituting rates which are 10/9 of the rates determined under paragraph (1)."

(3) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or aviation fuel on which tax was imposed by section 4081 or 4091 at the regular tax rate is used by any person in producing a mixture described in section 4081(c), 4091(c)(1)(A), or 4091(d)(1)(A) (as the case may be) which is sold or used in such person's trade or business the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or aviation fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 1995."

26 USC 4041 note.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

26 USC 4041 note.

(5) FLOOR STOCKS TAXES.—

(A) IMPOSITION OF TAX.—In the case of aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of the Internal Revenue Code of 1986 before December 1, 1990, and which is held on such date by any person, there is hereby imposed a floor stocks tax on such fuel.

(B) RATE OF TAX.—The rate of the tax imposed by subparagraph (A) shall be 3.5 cents per gallon.

(C) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(i) LIABILITY FOR TAX.—A person holding fuel on December 1, 1990, to which the tax imposed by this paragraph applies shall be liable for such tax.

(ii) METHOD OF PAYMENT.—The tax imposed by this paragraph shall be paid in such manner as the Secretary shall prescribe.

(iii) TIME FOR PAYMENT.—The tax imposed by this paragraph shall be paid on or before May 31, 1991.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) HELD BY A PERSON.—Fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(ii) AVIATION FUEL.—The term "aviation fuel" has the meaning given such term by section 4092(a) of such Code.

(iii) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(E) EXCEPTION FOR EXEMPT USES.—The tax imposed by this paragraph shall not apply to fuel held by any person exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code).

(F) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this paragraph, apply with respect to the floor stock taxes imposed by this paragraph to the same extent as if such taxes were imposed by such section 4091.

(c) SPECIAL RULES FOR DEPOSITS OF TAX REVENUES.—

(1) Section 9502 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES FOR TRANSFERS INTO TRUST FUND.—

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be 3 cents per gallon less (3.5 cents per gallon less in the case of taxes imposed by section 4041(c)(1) and 4091) than the amounts which would (but for this sentence) be appropriated under such paragraphs.

"(2) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of fuel used in producing a mixture described in subparagraph (A)."

(2) Paragraph (2) of section 9502(b) is amended by inserting "and the deficit reduction rate" after "financing rate".

(d) EXTENSION OF TAXES AND TRUST FUND.—

(1) TRANSPORTATION TAXES.—Sections 4261(g) and 4271(d) are each amended by striking "January 1, 1991" and inserting "January 1, 1996".

(2) FUEL TAXES.—

(A) Subparagraph (B) of section 4091(b)(6), as redesignated by section 11211, is amended by striking "January 1, 1991" and inserting "January 1, 1996".

(B) Paragraph (5) of section 4041(c) is amended by striking "December 31, 1990" and inserting "December 31, 1995".

(3) DEPOSITS INTO TRUST FUND.—Subsection (b) of section 9502 (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking "January 1, 1991" each place it appears and inserting "January 1, 1996".

(4) EXPENDITURE PURPOSES TO INCLUDE THE FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING, AND DEVELOPMENT AUTHORIZATION ACT OF 1990 AND THE AVIATION SAFETY AND CAPACITY EXPANSION ACT OF 1990.—Subparagraph (A) of section 9502(d)(1) is amended by striking "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987)" and inserting "or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 (as such Acts were in effect on the date of the enactment of the Aviation Safety and Capacity Expansion Act of 1990)".

(e) REPEAL OF REDUCTION IN RATES.—

(1) Section 4283 (relating to reduction in aviation related taxes in certain cases) is hereby repealed.

(2) The table of sections for part III of subchapter C of chapter 33 is amended by striking the item relating to section 4283.

(3) Subsection (c) of section 4041 is amended by striking paragraph (6).

(f) COORDINATION WITH OTHER PROVISIONS.—No amendment or any other provision of this section shall take effect unless the Airport Noise and Capacity Act of 1990, the Aviation Safety and Capacity Expansion Act of 1990, and the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 are enacted as part of this Act and are identical to the provisions of such Acts as included in the conference report on H.R. 5835 of the 101st Congress.

SEC. 11214. INCREASE IN HARBOR MAINTENANCE TAX.

(a) IN GENERAL.—Subsection (b) of section 4461 is amended by striking "0.04 percent" and inserting "0.125 percent".

26 USC 4461 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1991.

SEC. 11215. EXTENSION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.

(a) IN GENERAL.—Paragraph (2) of section 4081(d) is amended to read as follows:

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995."

26 USC 4081 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on December 1, 1990.

SEC. 11216. AMENDMENTS TO GAS GUZZLER TAX.

(a) INCREASE IN RATE OF TAX.—Subsection (a) of section 4064 (relating to gas guzzler tax) is amended to read as follows:

"(a) IMPOSITION OF TAX.—There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 22.5	$0
At least 21.5 but less than 22.5	1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700."

(b) LIMOUSINES INCLUDED WITHOUT REGARD TO WEIGHT.—Subparagraph (A) of section 4064(b)(1) is amended by adding at the end thereof the following new sentence:

"In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii)."

(c) REPEAL OF EXCEPTION FOR LENGTHENING EXISTING AUTOMOBILES.—Subparagraph (B) of section 4064(b)(5) (defining manufacturer) is amended to read as follows:

"(B) LENGTHENING TREATED AS MANUFACTURE.—For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person."

(d) REPEAL OF SPECIAL RULES FOR SMALL MANUFACTURERS.—Section 4064 is amended by striking subsection (d).

(e) EFFECTIVE DATES.— 26 USC 4064 note.

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to sales after December 31, 1990.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on January 1, 1991.

(3) SUBSECTION (d).—The amendment made by subsection (d) shall take effect on the date of the enactment of this section.

SEC. 11217. TELEPHONE EXCISE TAX MODIFIED AND MADE PERMANENT.

(a) TAX MADE PERMANENT.—Paragraph (2) of section 4251(b) is amended by striking "percent;" and all that follows and inserting "percent."

(b) ACCELERATION OF DEPOSIT REQUIREMENTS.—

(1) IN GENERAL.—Subsection (e) of section 6302 (relating to time for deposit of taxes of airline tickets) is amended—

(A) by inserting "COMMUNICATIONS SERVICES AND" before "AIRLINE", and

(B) by inserting "section 4251 or" before "subsection (a) or (b)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments of taxes considered collected during semimonthly periods beginning after December 31, 1990. 26 USC 6302 note.

(c) ONE-TIME FILING OF TELEPHONE EXCISE TAX EXEMPTION CERTIFICATES.—

(1) IN GENERAL.—Section 4253 is amended by adding at the end thereof the following new subsection:

"(k) FILING OF EXEMPTION CERTIFICATES.—

"(1) IN GENERAL.—In order to claim an exemption under subsection (c), (h), (i), or (j), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

"(2) DURATION OF CERTIFICATE.—Any statement provided under paragraph (1) shall remain in effect until—

"(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

"(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information."

26 USC 4253 note.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to any claim for exemption made after the date of the enactment of this Act.

(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act shall remain effective until the end of the annual period.

26 USC 5001 note.

SEC. 11218. FLOOR STOCKS TAX TREATMENT OF ARTICLES IN FOREIGN TRADE ZONES.

Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any article which is located in a foreign trade zone on the effective date of any increase in tax under the amendments made by this part or part I shall be subject to floor stocks taxes imposed by such parts if—

(1) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(2) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

PART III—TAXES ON LUXURY ITEMS

SEC. 11221. TAXES ON LUXURY ITEMS.

(a) IN GENERAL.—Chapter 31 (relating to retail excise taxes) is amended by redesignating subchapters A and B as subchapters B and C, respectively, and by inserting before subchapter B (as so redesignated) the following new subchapter:

"SUBCHAPTER A—CERTAIN LUXURY ITEMS

"PART I. IMPOSITION OF TAXES

"Subpart A—Passenger Vehicles, Boats, and Aircraft

"SEC. 4001. PASSENGER VEHICLES.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"SEC. 4002. BOATS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any boat a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $100,000.

"(b) EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any boat for use by the purchaser exclusively in the active conduct of—

"(1) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(2) any other trade or business unless the boat is to be used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation.

"SEC. 4003. AIRCRAFT.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any aircraft a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $250,000.

"(b) AIRCRAFT.—For purposes of this section, the term 'aircraft' means any aircraft—

"(1) which is propelled by a motor, and

"(2) which is capable of carrying 1 or more individuals.

"(c) 80 PERCENT GENERAL BUSINESS USE.—

"(1) IN GENERAL.—The tax imposed by this section shall not apply to the sale of any aircraft if 80 percent of the use by the purchaser is in any trade or business.

"(2) PROOF OF BUSINESS USE.—On the income tax return for each of the 1st 2 taxable years ending after the date an aircraft on which no tax was imposed by this section by reason of paragraph (1) was placed in service, the taxpayer filing such return shall demonstrate to the satisfaction of the Secretary that the use of such aircraft during each such year met the requirement of paragraph (1).

"(3) IMPOSITION OF LUXURY TAX WHERE FAILURE OF PROOF.—If the requirement of paragraph (2) is not met for either of the taxable years referred to therein, the taxpayer filing such returns shall pay the tax which would (but for paragraph (1)) have been imposed on such aircraft plus interest determined under subchapter C of chapter 67 during the period beginning on the date such tax would otherwise have been imposed. If such taxpayer fails to pay the tax imposed pursuant to the preceding sentence, no deduction shall be allowed under section 168 for any taxable year with respect to the aircraft involved.

"(d) OTHER EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any aircraft for use by the purchaser exclusively—

"(1) in the aerial application of fertilizers or other substances,

"(2) in the case of a helicopter, in a use described in paragraph (1) or (2) of section 4261(e),

"(3) in a trade or business of providing flight training, or

"(4) in a trade or business of transporting persons or property for compensation or hire.

"SEC. 4004. RULES APPLICABLE TO SUBPART A.

"(a) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed under this subpart on the sale of any article—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(b) SEPARATE PURCHASE OF ARTICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any article taxable under this subpart (determined without regard to price) installs (or causes to be installed) any part or accessory on such article, and

"(B) such installation is not later than the date 6 months after the date the article was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle, boat, or aircraft was sold, over

"(B) $30,000 in the case of a passenger vehicle, $100,000 in the case of a boat, and $250,000 in the case of an aircraft.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory, or

"(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the taxable article does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(c) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF ARTICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any article by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such article is resold by the purchaser or such purchaser makes a substantial non-exempt use of such article,

then such sale or use of such article by such purchaser shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of an article if the 1st retail sale of such article is not taxable under this subchapter by reason of such use.

"Subpart B—Jewelry and Furs

"SEC. 4006. JEWELRY.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any jewelry a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000.

"(b) JEWELRY.—For purposes of subsection (a), the term 'jewelry' means all articles commonly or commercially known as jewelry, whether real or imitation, including watches.

"(c) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces jewelry from material furnished directly or indirectly by a customer, and

"(2) the jewelry is for the use of, and not for resale by, such customer,

the delivery of such jewelry to such customer shall be treated as the 1st retail sale of such jewelry for a price equal to its fair market value at the time of such delivery.

"SEC. 4007. FURS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of the following articles a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000:

"(1) Articles made of fur on the hide or pelt.

"(2) Articles of which such fur is a major component.

"(b) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces an article of the kind described in subsection (a) from fur on the hide or pelt furnished, directly or indirectly, by a customer, and

"(2) the article is for the use of, and not for resale by, such customer,

the delivery of such article to such customer shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such delivery.

"PART II—RULES OF GENERAL APPLICABILITY

"SEC. 4011. DEFINITIONS AND SPECIAL RULES.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses an article taxable under this subchapter (including any use after importation) before the 1st retail sale of such article, then such person shall be liable for tax under this subchapter in the same manner as if such article were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE OF PASSENGER VEHICLES.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN ARTICLES.—Paragraph (1) shall not apply to the use of an article after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the article occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by any person shall be considered a sale of such article at retail.

"(2) SPECIAL RULES FOR CERTAIN LEASES OF PASSENGER VEHICLES, BOATS, AND AIRCRAFT.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle, boat, or aircraft to a person engaged in a leasing or rental trade or business of the article involved for leasing by such person in a qualified lease shall not be treated as the 1st retail sale of such article.

"(B) QUALIFIED LEASE.—For purposes of subparagraph (A), the term 'qualified lease' means—

"(i) any lease in the case of a boat or an aircraft, and

"(ii) any long-term lease (as defined in section 4052) in the case of any passenger vehicle.

"(C) SPECIAL RULES.—In the case of a qualified lease of an article which is treated as the 1st retail sale of such article—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the article is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a qualified lease if the lessee's use of the article under such lease is an exempt use (as defined in section 4004(c)) of such article.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the article in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such article if—

"(I) such component is furnished by the 1st user of such article, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

Subparagraph (B)(iii) shall not apply for purposes of the taxes imposed by sections 4006 and 4007.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"(e) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any article taxable under this subchapter shall be treated as part of the article.

"(f) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c),

rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.

"SEC. 4012. TERMINATION.

"The taxes imposed by this subchapter shall not apply to any sale or use after December 31, 1999."

(b) EXEMPTION FOR EXPORTS.—

(1) The material preceding paragraph (1) of section 4221(a) is amended by striking "section 4051" and inserting "subchapter A or C of chapter 31".

(2) Subsection (a) of section 4221 is amended by adding at the end thereof the following new sentence: "In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply."

(c) EXEMPTION FOR SALES TO THE UNITED STATES.—Section 4293 is amended by inserting "subchapter A of chapter 31," before "section 4041".

(d) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "section 4053(a)(6)" and inserting "section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)".

(2) Paragraph (1) of section 4221(d) is amended by striking "the tax imposed by section 4051" and inserting "taxes imposed by subchapter A or C of chapter 31".

(3) Subsection (d) of section 4222 is amended by striking "sections 4053(a)(6)" and inserting "sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)".

(e) CLERICAL AMENDMENT.—The table of subchapters for chapter 31 is amended to read as follows:

"Subchapter A. Certain luxury items.
"Subchapter B. Special fuels.
"Subchapter C. Heavy trucks and trailers."

26 USC 4001 note.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1991.

(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory therefor) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory).

PART IV—4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND

SEC. 11231. 4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "January 1, 1992" and inserting "January 1, 1996":

(A) Section 59A(e)(1) (relating to application of environmental tax).

(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).

(2) Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking "1989" and inserting "1993",

(B) by striking "1990" each place it appears and inserting "1994", and

(C) by striking "1991" each place it appears and inserting "1995".

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking "$6,650,000,000" each place it appears and inserting "$11,970,000,000" and by striking "December 31, 1991" and inserting "December 31, 1995".

(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) is amended by striking "December 31, 1991" and inserting "December 31, 1995".

(d) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraphs:

"(6) 1992, $250,000,000,

"(7) 1993, $250,000,000,

"(8) 1994, $250,000,000, and

"(9) 1995, $250,000,000."

Subtitle C—Other Revenue Increases

PART I —INSURANCE PROVISIONS

Subpart A—Provisions Related to Policy Acquisition Costs

SEC. 11301. CAPITALIZATION OF POLICY ACQUISITION EXPENSES.

(a) GENERAL RULE.—Part III of subchapter L of chapter 1 (relating to provisions of general application) is amended by adding at the end thereof the following new section:

"SEC. 848. CAPITALIZATION OF CERTAIN POLICY ACQUISITION EXPENSES.

"(a) GENERAL RULE.—In the case of an insurance company—

"(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

"(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

"(b) 5-YEAR AMORTIZATION FOR FIRST $5,000,000 OF SPECIFIED POLICY ACQUISITION EXPENSES.—

"(1) IN GENERAL.—Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting '60-month' for '120-month'.

"(2) PHASE-OUT.—If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

"(3) SPECIAL RULE FOR MEMBERS OF CONTROLLED GROUP.—In the case of any controlled group—

"(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

"(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term 'controlled group' means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

"(4) EXCEPTION FOR ACQUISITION EXPENSES ATTRIBUTABLE TO CERTAIN REINSURANCE CONTRACTS.—Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

"(c) SPECIFIED POLICY ACQUISITION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified policy acquisition expenses' means, with respect to any taxable year, so much of the general deductions for such taxable year as does not exceed the sum of—

"(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

"(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

"(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

"(2) GENERAL DEDUCTIONS.—The term 'general deductions' means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

"(d) NET PREMIUMS.—For purposes of this section—

"(1) IN GENERAL.—The term 'net premiums' means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

"(A) the gross amount of premiums and other consideration on such contracts, over

"(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

"(2) AMOUNTS DETERMINED ON ACCRUAL BASIS.—In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of

net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

"(3) TREATMENT OF CERTAIN POLICYHOLDER DIVIDENDS AND SIMILAR AMOUNTS.—Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

"(4) SPECIAL RULES FOR REINSURANCE.—

"(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

"(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

"(e) CLASSIFICATION OF CONTRACTS.—For purposes of this section—

"(1) SPECIFIED INSURANCE CONTRACT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'specified insurance contract' means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

"(B) EXCEPTIONS.—The term 'specified insurance contract' shall not include—

"(i) any pension plan contract (as defined in section 818(a)),

"(ii) any flight insurance or similar contract, and

"(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection).

"(2) GROUP LIFE INSURANCE CONTRACT.—The term 'group life insurance contract' means any life insurance contract—

"(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

"(B) the premiums for which are determined on a group basis, and

"(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

"(3) TREATMENT OF ANNUITY CONTRACTS COMBINED WITH NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE.—Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

"(4) TREATMENT OF GUARANTEED RENEWABLE CONTRACTS.—The rules of section 816(e) shall apply for purposes of this section.

"(5) TREATMENT OF REINSURANCE CONTRACT.—A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

"(f) SPECIAL RULE WHERE NEGATIVE NET PREMIUMS.—

"(1) IN GENERAL.—If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

"(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

"(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

"(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

"(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

"(2) NEGATIVE CAPITALIZATION AMOUNT.—For purposes of paragraph (1), the term 'negative capitalization amount' means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

"(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

"(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

"(g) TREATMENT OF CERTAIN CEDING COMMISSIONS.—Nothing in any provision of law (other than this section) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

"(h) SECRETARIAL AUTHORITY TO ADJUST CAPITALIZATION AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

"(2) ADJUSTMENT TO OTHER CONTRACTS.—If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

"(i) TREATMENT OF QUALIFIED FOREIGN CONTRACTS UNDER ADJUSTED CURRENT EARNINGS PREFERENCE.—For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

"(j) TRANSITIONAL RULE.—In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year."

(b) REPEAL OF SPECIAL TREATMENT OF ACQUISITION EXPENSES UNDER MINIMUM TAX.—Paragraph (4) of section 56(g) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 848. Capitalization of certain policy acquisition expenses."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986. 26 USC 848 note.

(2) SUBSECTION (b).— 26 USC 56 note.

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning on or after September 30, 1990, except that, in the case of a small insurance company, such amendment shall apply to taxable years beginning after December 31, 1989. For purposes of this paragraph, the term "small insurance company" means any insurance company which meets the requirements of section 806(a)(3) of the Internal Revenue Code of 1986; except that paragraph (2) of section 806(c) of such Code shall not apply.

(B) SPECIAL RULES FOR YEAR WHICH INCLUDES SEPTEMBER 30, 1990.—In the case of any taxable year which includes September 30, 1990, the amount of acquisition expenses which is required to be capitalized under section 56(g)(4)(F) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (b)) by a company which is not a small insurance company shall be the amount which bears the same ratio to the amount which (but for this subparagraph) would be so required to be capitalized as the number of days in such taxable year before September 30, 1990, bears to the total number of days in such taxable year. A similar reduction shall be made in the amount amortized for such taxable year under such section 56(g)(4)(F).

SEC. 11302. TREATMENT OF CERTAIN NONLIFE RESERVES OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Subsection (e) of section 807 (relating to special rules for computing reserves) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TREATMENT OF CERTAIN NONLIFE RESERVES.—

"(A) IN GENERAL.—The amount taken into account for purposes of subsections (a) and (b) as—

"(i) the opening balance of the items referred to in subparagraph (C), and

"(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

"(B) TRANSITIONAL RULE.—

"(i) IN GENERAL.—In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 3 1/3 percent of such company's closing balance of the items referred to in subparagraph (C) for its most recent taxable year beginning before September 30, 1990.

"(ii) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

"(C) DESCRIPTION OF ITEMS.—For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B)."

26 USC 807 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning on or after September 30, 1990.

SEC. 11303. TREATMENT OF LIFE INSURANCE RESERVES OF INSURANCE COMPANIES WHICH ARE NOT LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Paragraph (4) of section 832(b) (defining premiums earned) is amended by striking "section 807, pertaining" and all that follows down through the period at the end of the first sentence which follows subparagraph (C) and inserting "section 807.".

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(7) is amended—

(1) by striking "amounts included in unearned premiums under the 2nd sentence of such subparagraph" and inserting "insurance contracts described in section 816(b)(1)(B)", and

(2) by striking "such amounts into account" and inserting "such contracts into account".

26 USC 832 note.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after September 30, 1990.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer,

(C) such change shall be treated as having been made with the consent of the Secretary, and

(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.

Subpart B—Treatment of Salvage Recoverable

SEC. 11305. TREATMENT OF SALVAGE RECOVERABLE.

(a) GENERAL RULE.—Subparagraph (A) of section 832(b)(5) (defining losses incurred) is amended to read as follows:

"(A) IN GENERAL.—The term 'losses incurred' means losses incurred during the taxable year on insurance contracts computed as follows:

"(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

"(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

"(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary."

(b) CONFORMING AMENDMENT.—Subsection (g) of section 846 is amended by adding "and" at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.— 26 USC 832 note.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

(i) such change shall be treated as a change in a method of accounting,

(ii) such change shall be treated as initiated by the taxpayer, and

(iii) such change shall be treated as having been made with the consent of the Secretary.

(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).

Subpart C—Waiver of Estimated Tax Penalties

26 USC 6655 note.

SEC. 11307. WAIVER OF ESTIMATED TAX PENALTIES.

No addition to tax shall be made under section 6655 of the Internal Revenue Code of 1986 for any period before March 16, 1991, with respect to any underpayment to the extent such underpayment was created or increased by any provision of this part.

PART II—COMPLIANCE PROVISIONS

SEC. 11311. SUSPENSION OF STATUTE OF LIMITATIONS DURING PROCEEDINGS TO ENFORCE CERTAIN SUMMONSES.

(a) GENERAL RULE.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) EXTENSION IN CASE OF CERTAIN SUMMONSES.—

"(1) IN GENERAL.—If any designated summons is issued by the Secretary with respect to any return of tax by a corporation, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended—

"(A) during any judicial enforcement period—

"(i) with respect to such summons, or

"(ii) with respect to any other summons which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

"(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120-day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

"(2) DESIGNATED SUMMONS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'designated summons' means any summons issued for purposes of determining the amount of any tax imposed by this title if—

"(i) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions), and

"(ii) such summons clearly states that it is a designated summons for purposes of this subsection.

"(B) LIMITATION.—A summons which relates to any return shall not be treated as a designated summons if a prior summons which relates to such return was treated as a designated summons for purposes of this subsection.

"(3) JUDICIAL ENFORCEMENT PERIOD.—For purposes of this subsection, the term 'judicial enforcement period' means, with respect to any summons, the period—

"(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

"(B) which ends on the day on which there is a final resolution as to the summoned person's response to such summons."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any tax (whether imposed before, on, or after the date of the enactment of this Act) if the period prescribed by section 6501 of the Internal Revenue Code of 1986 for the assessment of such tax (determined with regard to extensions) has not expired on such date of the enactment. 26 USC 6503 note.

SEC. 11312. ACCURACY-RELATED PENALTY TO APPLY TO SECTION 482 ADJUSTMENTS.

(a) GENERAL RULE.—Subsection (e) of section 6662 (defining substantial valuation overstatement under chapter 1) is amended to read as follows:

"(e) SUBSTANTIAL VALUATION MISSTATEMENT UNDER CHAPTER 1.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—

"(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

"(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

"(ii) the net section 482 transfer price adjustment for the taxable year exceeds $10,000,000.

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

"(3) NET SECTION 482 TRANSFER PRICE ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net section 482 transfer price adjustment' means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

"(B) CERTAIN ADJUSTMENTS EXCLUDED IN DETERMINING THRESHOLD.—For purposes of determining whether the $10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded—

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

"(C) SPECIAL RULE.—If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is

determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 6662(b) is amended to read as follows:

"(3) Any substantial valuation misstatement under chapter 1."

(2) Subparagraph (A) of section 6662(h)(2) is amended to read as follows:

"(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting—

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and

"(iii) '$20,000,000' for '$10,000,000',".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act. 26 USC 6662 note.

SEC. 11313. TREATMENT OF PERSONS PROVIDING SERVICES.

(a) GENERAL RULE.—Subsection (n) of section 6103 (relating to certain other persons) is amended—

(1) by striking "and the programming" and inserting "the programming", and

(2) by inserting after "of equipment," the following "and the providing of other services,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. 26 USC 6103 note.

SEC. 11314. APPLICATION OF AMENDMENTS MADE BY SECTION 7403 OF REVENUE RECONCILIATION ACT OF 1989 TO TAXABLE YEARS BEGINNING ON OR BEFORE JULY 10, 1989. 26 USC 6038A note.

(a) GENERAL RULE.—The amendments made by section 7403 of the Revenue Reconciliation Act of 1989 shall apply to—

(1) any requirement to furnish information under section 6038A(a) of the Internal Revenue Code of 1986 (as amended by such section 7403) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038A(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038A(e)(1) of such Code (as so amended) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

(b) CONTINUATION OF OLD FAILURES.—In the case of any failure with respect to a taxable year beginning on or before July 10, 1989, which first occurs on or before the date of the enactment of this Act but which continues after such date of enactment, section 6038A(d)(2) of the Internal Revenue Code of 1986 (as amended by subsection (c) of such section 7403) shall apply for purposes of determining the amount of the penalty imposed for 30-day periods

referred to in such section 6038A(d)(2) which begin after the date of the enactment of this Act.

SEC. 11315. OTHER REPORTING REQUIREMENTS.

(a) GENERAL RULE.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6038B the following new section:

"SEC. 6038C. INFORMATION WITH RESPECT TO FOREIGN CORPORATIONS ENGAGED IN U.S. BUSINESS.

"(a) REQUIREMENT.—If a foreign corporation (hereinafter in this section referred to as the 'reporting corporation') is engaged in a trade or business within the United States at any time during a taxable year—

"(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

"(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

"(b) REQUIRED INFORMATION.—For purposes of subsection (a), the information described in this subsection is—

"(1) the information described in section 6038A(b), and

"(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

"(c) PENALTY FOR FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.—The provisions of subsection (d) of section 6038A shall apply to—

"(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

"(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section 6038A.

"(d) ENFORCEMENT OF REQUESTS FOR CERTAIN RECORDS.—

"(1) AGREEMENT TO TREAT CORPORATION AS AGENT.—The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

"(2) RULES WHERE INFORMATION NOT FURNISHED.—If—

"(A) for purposes of determining the amount of the reporting corporation's liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

"(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

"(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

"(3) APPLICABLE RULES.—If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

"(4) JUDICIAL PROCEEDINGS.—The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting 'transaction or item' for 'transaction'.

"(e) DEFINITIONS.—For purposes of this section, the terms 'related party', 'foreign person', and 'records' have the respective meanings given to such terms by section 6038A(c)."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6038A(a) is amended by striking "or is a foreign corporation engaged in trade or business within the United States".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038B the following new item:

"Sec. 6038C. Information with respect to foreign corporations engaged in U.S. business."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to— 26 USC 6038A note.

(1) any requirement to furnish information under section 6038C(a) of the Internal Revenue Code of 1986 (as added by this section) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038C(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038C(d)(1) of such Code (as so added) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began.

26 USC 482 note.

SEC. 11316. STUDY OF SECTION 482.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986. Such study shall include examination of—

(1) the effectiveness of the amendments made by this part in increasing levels of compliance with such section 482,

(2) use of advanced determination agreements with respect to issues under such section 482,

(3) possible legislative or administrative changes to assist the Internal Revenue Service in increasing compliance with such section 482, and

(4) coordination of the administration of such section 482 with similar provisions of foreign tax laws and with domestic nontax laws.

(b) REPORT.—Not later than March 1, 1992, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 11317. 10-YEAR PERIOD OF LIMITATION ON COLLECTION AFTER ASSESSMENT.

(a) IN GENERAL.—Subsection (a) of section 6502 (relating to collection after assessment) is amended—

(1) by striking "6 years" in paragraph (1) and inserting "10 years", and

(2) by striking "6-year period" each place it appears in paragraph (2) and inserting "10-year period".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6323(g) is amended by striking "6 years" each place it appears and inserting "10 years".

26 USC 6323 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) taxes assessed after the date of the enactment of this Act, and

(2) taxes assessed on or before such date if the period specified in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by subsection (a)) for collection of such taxes has not expired as of such date.

SEC. 11318. RETURN REQUIREMENT WHERE CASH RECEIVED IN TRADE OR BUSINESS.

(a) CERTAIN MONETARY INSTRUMENTS TREATED AS CASH.—Subsection (d) of section 6050I (relating to returns relating to cash received in trade or business) is amended to read as follows:

"(d) CASH INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—For purposes of this section, the term 'cash' includes—

"(1) foreign currency, and

"(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B)."

(b) INCREASE IN PENALTY FOR INTENTIONAL DISREGARD OF REPORTING REQUIREMENT.—Paragraph (2) of section 6721(e) (relating to penalty for intentional disregard) is amended—

(1) by inserting "6050I," after "6050H," in subparagraph (A),

(2) by striking "or" at the end of subparagraph (A),

(3) by striking "and" at the end of subparagraph (B) and inserting "or", and

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of a return required to be filed under section 6050I(a) with respect to any transaction (or related transactions), the greater of—

"(i) $25,000, or

"(ii) the amount of cash (within the meaning of section 6050I(d)) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000, and".

(c) CLARIFICATION OF APPLICATION OF PROVISION PROHIBITING EVASION TECHNIQUES.—The heading of subsection (f) of section 6050I is amended to read as follows:

"(f) STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.—".

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the operation of section 6050I of the Internal Revenue Code of 1986. Such study shall include an examination of—

(1) the extent of compliance with the provisions of such section,

(2) the effectiveness of the penalties in ensuring compliance with the provisions of such section,

(3) methods to increase compliance with the provisions of such section and ways Form 8300 could be simplified, and

(4) appropriate methods to increase the usefulness and availability of information submitted under the provisions of such section.

Not later than March 31, 1991, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this subsection, together with such recommendations as he may deem advisable.

(e) EFFECTIVE DATES.— 26 USC 6050I note.

(1) The amendments made by subsections (a) and (b) shall apply to amounts received after the date of the enactment of this Act.

(2) The amendment made by subsection (c) shall take effect on the date of the enactment of this Act.

(3) Not later than June 1, 1991, the Secretary of the Treasury or his delegate shall prescribe regulations under section

6050I(d)(2) of the Internal Revenue Code of 1986 (as amended by this section).

SEC. 11319. 5-YEAR EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

26 USC 7801 note.

(a) GENERAL RULE.—Subsection (c) of section 10511 of the Revenue Act of 1987 (relating to fees for requests for ruling, determination, and similar letters) is amended by adding at the end thereof the following new sentence: "Subsection (a) shall also apply with respect to requests made after September 30, 1990, and before October 1, 1995."

26 USC 7801 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on September 29, 1990, except that no advance payment shall be required for any fee for any requests filed after September 29, 1990, and before the 30th day after the date of the enactment of this Act.

PART III—CORPORATE PROVISIONS

SEC. 11321. RECOGNITION OF GAIN BY DISTRIBUTING CORPORATION IN CERTAIN SECTION 355 TRANSACTIONS.

(a) GENERAL RULE.—Section 355 (relating to distribution of stock and securities of a controlled corporation) is amended by striking subsection (c) and inserting the following new subsections:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) QUALIFIED PROPERTY.—For purposes of subparagraph (A), the term 'qualified property' means any stock or securities in the controlled corporation.

"(C) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

"(d) RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONTROLLED CORPORATION.—

"(1) IN GENERAL.—In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

"(2) DISQUALIFIED DISTRIBUTION.—For purposes of this subsection, the term 'disqualified distribution' means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

"(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

"(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

"(3) DISQUALIFIED STOCK.—For purposes of this subsection, the term 'disqualified stock' means—

"(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

"(B) any stock in any controlled corporation—

"(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

"(ii) received in the distribution to the extent attributable to distributions on—

"(I) stock described in subparagraph (A), or

"(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

"(4) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection, the term '50-percent or greater interest' means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

"(5) PURCHASE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'purchase' means any acquisition but only if—

"(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

"(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

"(B) CERTAIN SECTION 351 EXCHANGES TREATED AS PURCHASES.—The term 'purchase' includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

"(i) any cash or cash item,

"(ii) any marketable stock or security, or

"(iii) any debt of the transferor.

"(C) CARRYOVER BASIS TRANSACTIONS.—If—

"(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

"(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

"(6) SPECIAL RULE WHERE SUBSTANTIAL DIMINUTION OF RISK.—

"(A) IN GENERAL.—If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

"(B) PROPERTY TO WHICH SUSPENSION APPLIES.—This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

"(i) an option,

"(ii) a short sale,

"(iii) any special class of stock, or

"(iv) any other device or transaction.

"(7) AGGREGATION RULES.—

"(A) IN GENERAL.—For purposes of this subsection, a person and all persons related to such person (within the meaning of 267(b) or 707(b)(1)) shall be treated as one person.

"(B) PERSONS ACTING PURSUANT TO PLANS OR ARRANGEMENTS.—If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

"(8) ATTRIBUTION FROM ENTITIES.—

"(A) IN GENERAL.—Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting '10 percent' for '50 percent' in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

"(B) DEEMED PURCHASE RULE.—If—

"(i) any person acquires by purchase an interest in any entity, and

"(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(B) regulations modifying the definition of the term 'purchase'."

(b) TECHNICAL AMENDMENT.—Subsection (c) of section 361 is amended by adding at the end thereof the following new paragraph:

"(5) CROSS REFERENCE.—

"For provision providing for recognition of gain in certain distributions, see section 355(d)."

(c) EFFECTIVE DATE.— 26 USC 355 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to distributions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(C) such acquisition is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

SEC. 11322. MODIFICATIONS TO REGULATIONS ISSUED UNDER SECTION 305(c).

(a) GENERAL RULE.—Subsection (c) of section 305 (relating to certain transactions treated as distributions) is amended by adding at the end thereof the following new sentence: "Regulations prescribed under the preceding sentence shall provide that—

"(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

"(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

"(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be

taken into account under principles similar to the principles of section 1272(a)."

26 USC 305 note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to stock issued after October 9, 1990.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986).

SEC. 11323. MODIFICATIONS TO SECTION 1060.

(a) EFFECT OF ALLOCATION AGREEMENTS.—Subsection (a) of section 1060 (relating to special allocation rules for certain asset allocations) is amended by adding at the end thereof the following new sentence: "If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate."

(b) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTEREST IN ENTITIES.—

(1) IN GENERAL.—Section 1060 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTERESTS IN ENTITIES.—

"(1) IN GENERAL.—If—

"(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

"(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

"(2) 10-PERCENT OWNER.—For purposes of this subsection—

"(A) IN GENERAL.—The term '10-percent owner' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

"(B) CONSTRUCTIVE OWNERSHIP.—Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

"(3) RELATED PERSON.—For purposes of this subsection, the term 'related person' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner."

(2) TECHNICAL AMENDMENT.—Clause (x) of section 6724(d)(1)(B) is amended by striking "section 1060(b)", and inserting "subsection (b) or (e) of section 1060".

(c) INFORMATION REQUIRED IN SECTION 338(h)(10) TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (10) of section 338(h) is amended by adding at the end thereof the following new subparagraph:

"(C) INFORMATION REQUIRED TO BE FURNISHED TO THE SECRETARY.—Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

"(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

"(ii) Any modification of the amount described in clause (i).

"(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph."

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 6724(d)(1) is amended by striking "or" at the end of clause (x), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss)."

(d) EFFECTIVE DATE.— 26 USC 338 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11324. MODIFICATION TO CORPORATION EQUITY REDUCTION LIMITATIONS ON NET OPERATING LOSS CARRYBACKS.

(a) REPEAL OF EXCEPTION FOR ACQUISITIONS OF SUBSIDIARIES.—Clause (ii) of section 172(m)(3)(B) (relating to exceptions) is amended to read as follows:

"(ii) EXCEPTION.—The term 'major stock acquisition' does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies."

(b) EFFECTIVE DATE.— 26 USC 172 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11325. ISSUANCE OF DEBT OR STOCK IN SATISFACTION OF INDEBTEDNESS.

(a) ISSUANCE OF DEBT INSTRUMENT.—

(1) Subsection (e) of section 108 (relating to general rules for discharge of indebtedness) is amended by adding at the end thereof the following new paragraph:

"(11) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter."

(2) Subsection (a) of section 1275 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) LIMITATION ON STOCK FOR DEBT EXCEPTION.—

(1) IN GENERAL.—Subparagraph (B) of section 108(e)(10) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN STOCK IN TITLE 11 CASES AND INSOLVENT DEBTORS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any transfer of stock of the debtor (other than disqualified stock)—

"(I) by a debtor in a title 11 case, or

"(II) by any other debtor but only to the extent such debtor is insolvent.

"(ii) DISQUALIFIED STOCK.—For purposes of clause (i), the term 'disqualified stock' means any stock with a stated redemption price if—

"(I) such stock has a fixed redemption date,

"(II) the issuer of such stock has the right to redeem such stock at one or more times, or

"(III) the holder of such stock has the right to require its redemption at one or more times."

(2) CONFORMING AMENDMENT.—Paragraph (8) of section 108(e) is amended by adding at the end thereof the following new sentence:

"Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph."

26 USC 108 note.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in

satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(D) is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

PART IV—EMPLOYMENT TAX PROVISIONS

SEC. 11331. INCREASE IN DOLLAR LIMITATION ON AMOUNT OF WAGES SUBJECT TO HOSPITAL INSURANCE TAX.

(a) HOSPITAL INSURANCE TAX.—

(1) IN GENERAL.—Paragraph (1) of section 3121(a) is amended—

(A) by striking "contribution and benefit base (as determined under section 230 of the Social Security Act)" each place it appears and inserting "applicable contribution base (as determined under subsection (x))", and

(B) by striking "such contribution and benefit base" and inserting "such applicable contribution base".

(2) APPLICABLE CONTRIBUTION BASE.—Section 3121 is amended by adding at the end thereof the following new subsection:

"(x) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the taxes imposed by sections 3101(a) and 3111(a), the applicable contribution base for any calendar year is the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the taxes imposed by section 3101(b) and 3111(b), the applicable contribution base is—

"(A) $125,000 for calendar year 1991, and

"(B) for any calendar year after 1991, the applicable contribution base for the preceding year adjusted in the same manner as is used in adjusting the contribution and benefit base under section 230(b) of the Social Security Act."

(b) SELF-EMPLOYMENT TAX.—

(1) IN GENERAL.—Subsection (b) of section 1402 is amended by striking "the contribution and benefit base (as determined under section 230 of the Social Security Act)" and inserting "the

applicable contribution base (as determined under subsection (k))".

(2) APPLICABLE CONTRIBUTION BASE.—Section 1402 is amended by adding at the end thereof the following new subsection:

"(k) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the tax imposed by section 1401(a), the applicable contribution base for any calendar year is the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the tax imposed by section 1401(b), the applicable contribution base for any calendar year is the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(c) RAILROAD RETIREMENT TAX.—Clause (i) of section 3231(e)(2)(B) is amended to read as follows:

"(i) TIER 1 TAXES.—

"(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(d) TECHNICAL AMENDMENT.—

(1) Paragraph (3) of section 6413(c) is amended to read as follows:

"(3) SEPARATE APPLICATION FOR HOSPITAL INSURANCE TAXES.—In applying this subsection with respect to—

"(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

"(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b),

the applicable contribution base determined under section 3121(x)(2) for any calendar year shall be substituted for 'contribution and benefit base (as determined under section 230 of the Social Security Act)' each place it appears."

(2) Sections 3122 and 3125 are each amended by striking "contribution and benefit base limitation" each place it appears and inserting "applicable contribution base limitation".

26 USC 1402 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to 1991 and later calendar years.

SEC. 11332. COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES UNDER SOCIAL SECURITY.

(a) EMPLOYMENT UNDER OASDI.—Paragraph (7) of section 210(a) of the Social Security Act (42 U.S.C. 410(a)(7)) is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

(3) by adding at the end the following new subparagraph:

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 211(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term 'retirement system' has the meaning given such term by section 218(b)(4);".

(b) EMPLOYMENT UNDER FICA.—Paragraph (7) of section 3121(b) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

(3) by adding at the end the following new subparagraph:

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term 'retirement system' has the meaning given such term by section 218(b)(4) of the Social Security Act;".

(c) MANDATORY EXCLUSION OF CERTAIN EMPLOYEES FROM STATE AGREEMENTS.—Section 218(c)(6) of the Social Security Act (42 U.S.C. 418(c)(6)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting in lieu thereof ", and"; and

(3) by adding at the end the following new subparagraph:

"(F) service described in section 210(a)(7)(F) which is included as 'employment' under section 210(a).".

26 USC 3121 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after July 1, 1991.

SEC. 11333. EXTENSION OF FUTA SURTAX.

(a) IN GENERAL.—Section 3301 (relating to rate of FUTA tax) is amended—

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1995", and

(2) by striking "1991" in paragraph (2) and inserting "1996".

26 USC 3301 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 1990.

SEC. 11334. DEPOSITS OF PAYROLL TAXES.

(a) IN GENERAL—[80] Subsection (g) of section 6302 is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY TAXES AND WITHHELD INCOME TAXES.—If, under regulations prescribed by the Secretary, a person is required to make deposits of taxes imposed by chapters 21 and 24 on the basis of eighth-month periods, such person shall make deposits of such taxes on the 1st banking day after any day on which such person has $100,000 or more of such taxes for deposit."

(b) TECHNICAL AMENDMENT.—Paragraph (2) of section 7632(b) of the Revenue Reconciliation Act of 1989 is hereby repealed.

26 USC 6302 note.

26 USC 6302 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts required to be deposited after December 31, 1990.

PART V—MISCELLANEOUS PROVISIONS

SEC. 11341. INCREASE IN RATE OF INTEREST PAYABLE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end thereof the following new subsection:

"(c) INCREASE IN UNDERPAYMENT RATE FOR LARGE CORPORATE UNDERPAYMENTS.—.

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[80] So in original. Probably should be "GENERAL.—".

"(1) IN GENERAL.—For purposes of determining the amount of interest payable under section 6601 on any large corporate underpayment for periods after the applicable date, paragraph (2) of subsection (a) shall be applied by substituting '5 percentage points' for '3 percentage points'.

"(2) APPLICABLE DATE.—For purposes of this subsection—

"(A) IN GENERAL.—The applicable date is the 30th day after the earlier of—

"(i) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

"(ii) the date on which the deficiency notice under section 6212 is sent.

"(B) SPECIAL RULES.—

"(i) NONDEFICIENCY PROCEDURES.—In the case of any underpayment of any tax imposed by this subtitle to which the deficiency procedures do not apply, subparagraph (A) shall be applied by taking into account any letter or notice provided by the Secretary which notifies the taxpayer of the assessment or proposed assessment of the tax.

"(ii) EXCEPTION WHERE AMOUNTS PAID IN FULL.—For purposes of subparagraph (A), a letter or notice shall be disregarded if, during the 30-day period beginning on the day on which it was sent, the taxpayer makes a payment equal to the amount shown as due in such letter or notice, as the case may be.

"(3) LARGE CORPORATE UNDERPAYMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'large corporate underpayment' means any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000.

"(B) TAXABLE PERIOD.—For purposes of subparagraph (A), the term 'taxable period' means—

"(i) in the case of any tax imposed by subtitle A, the taxable year, or

"(ii) in the case of any other tax, the period to which the underpayment relates."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1990. 26 USC 6621 note.

SEC. 11342. DENIAL OF DEDUCTION FOR UNNECESSARY COSMETIC SURGERY.

(a) IN GENERAL.—Section 213(d) (defining medical care) is attended by adding at the end thereof the following new paragraph:

"(9) COSMETIC SURGERY.—

"(A) IN GENERAL.—The term 'medical care' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

"(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term 'cosmetic surgery' means any proce-

dure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease."

26 USC 213 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11343. SPECIAL RULES WHERE GRANTOR OF TRUST IS A FOREIGN PERSON.

(a) IN GENERAL.—Section 672 (relating to definitions and rules) is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

"(1) IN GENERAL.—If—

"(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

"(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

26 USC 672 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any trust created after the date of the enactment of this Act, and

(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.

SEC. 11344. TREATMENT OF CONTRIBUTIONS OF APPRECIATED PROPERTY UNDER MINIMUM TAX.

Subparagraph (B) of section 57(a)(6) (relating to appreciated property charitable deduction) is amended by adding at the end thereof the following new sentence: "In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property."

Subtitle D—1-Year Extension of Certain Expiring Tax Provisions

SEC. 11401. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) EXTENSION.—Paragraph (5) of section 864(f) (relating to allocation of research and experimental expenditures) is amended to read as follows:

"(5) YEARS TO WHICH RULE APPLIES.—This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991."

26 USC 864 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after August 1, 1989.

SEC. 11402. RESEARCH CREDIT.

(a) EXTENSION.—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking "December 31, 1990" each place it appears and inserting "December 31, 1991", and

(2) by striking "January 1, 1991" each place it appears and inserting "January 1, 1992".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7110 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2). 26 USC 41 note.

(2) Subparagraph (D) of section 28(b)(1) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989. 26 USC 28 note.

SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.—Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.—Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2). 26 USC 127 note.

(d) EFFECTIVE DATES.— 26 USC 127 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

SEC. 11404. GROUP LEGAL SERVICES PLANS.

(a) IN GENERAL.—Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7102 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2). 26 USC 120 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989. 26 USC 120 note.

SEC. 11405. TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 51(c) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Act of 1981 is amended by striking "fiscal year 1982" and all that follows through "necessary" and inserting "each fiscal year such sums as may be necessary". 26 USC 51 note.

(c) EFFECTIVE DATES.— 26 USC 51 note.

(1) CREDIT.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after September 30, 1990.

(2) AUTHORIZATION.—The amendment made by subsection (b) shall apply to fiscal years beginning after 1990.

SEC. 11406. ENERGY INVESTMENT CREDIT FOR SOLAR AND GEOTHERMAL PROPERTY.

The table contained in section 46(b)(2)(A) (relating to energy percentage) is amended by striking "Sept. 30, 1990" in clauses (viii) and (ix) and inserting "Dec. 31, 1991".

SEC. 11407. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (o) of section 42 (relating to low-income housing credit) is amended—

(A) by striking "1990" each place it appears in paragraph (1) and inserting "1991", and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1992 if—

"(A) the bonds with respect to such building are issued before 1992,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1991, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1993, and

"(C) such building is placed in service before January 1, 1994."

(2) CONFORMING AMENDMENT.—Subsection (a) of section 7108 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

26 USC 42 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to calendar years after 1989.

26 USC 42 note.

(b) ADDITIONAL AMENDMENTS.—

(1) CLARIFICATION OF TENANT RIGHTS OF 1ST REFUSAL.—Paragraph (7) of section 42(i), as redesignated by subtitle G of this title, is amended by striking "the tenants of such building" and inserting "the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency".

(2) MONITORING NONCOMPLIANCE.—Clause (iv) of section 42(m)(1)(B) is amended to read as follows:

"(iv) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of."

(3) TREATMENT OF SECTION 515 RENTS.—Subparagraph (B) of section 42(g)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by inserting after clause (iii) the following new clause:

"(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949."

(4) QUALIFIED CENSUS TRACT DETERMINATIONS WHERE DATA NOT AVAILABLE.—Subclause (I) of section 42(d)(5)(C)(ii) is amended by

adding at the end thereof the following new sentence: "If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts."

(5) EXCEPTION TO CREDIT DENIAL FOR MODERATE REHABILITATION ASSISTANCE.—

(A) IN GENERAL.—The last sentence of paragraph (2) of section 42(c), as added by subtitle G of this title, is amended by inserting before the period "(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))".

(6) AFDC RECIPIENT STUDENTS NOT TO DISQUALIFY UNIT.—Subparagraph (D) of section 42(i)(3) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

"(i) a student and receiving assistance under title IV of the Social Security Act, or

"(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

(7) INTERMEDIARY COSTS CONSIDERED AT EVALUATION STAGE.—

(A) IN GENERAL.—Subparagraph (B) of section 42(m)(2) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following:

"(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas."

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 42(m)(1) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(8) 10-YEAR RULE NOT TO APPLY TO ACQUISITION OF CERTAIN SINGLE-FAMILY RESIDENCES.—Clause (ii) of section 42(d)(2)(D) is amended by striking "or" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", or", and by adding at the end thereof the following:

"(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence."

(9) APPLICATION OF NONPROFIT SET-ASIDE.—Section 42(h)(5) is amended—

(A) by inserting "own an interest in the project (directly or through a partnership) and" after "nonprofit organization is to" in subparagraph (B),

(B) by striking "and" at the end of clause (i) of subparagraph (C), by redesignating clause (ii) of such subparagraph as clause (iii), and by inserting after clause (i) of such subparagraph the following new clause:

"(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and", and

(C) by inserting "ownership and" before "material participation" in subparagraph (D).

26 USC 42 note.

(10) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) shall take effect on the date of the enactment of this Act.

(C) MONITORING.—The amendment made by paragraph (2) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

26 USC 42 note.

(c) ELECTION TO ACCELERATE CREDIT INTO 1990.—

(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

SEC. 11408. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "September 30, 1990" each place it appears and inserting "December 31, 1991".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(c) MODIFICATION AND SIMPLIFICATION OF RECAPTURE RULES.—

(1) MODIFICATION OF HOLDING PERIOD PERCENTAGE.—

(A) Clause (i) of section 143(m)(4)(C) is amended to read as follows:

"(i) IN GENERAL.—The term 'holding period percentage' means the percentage determined in accordance with the following table:

"If the disposition occurs during a year after the testing date which is:	The holding period percentage is:
The 1st such year	20
The 2d such year	40
The 3d such year	60
The 4th such year	80
The 5th such year	100
The 6th such year	80
The 7th such year	60
The 8th such year	40
The 9th such year	20."

(B) Subparagraph (C) of section 143(m)(4) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(C) Subparagraph (B) of section 143(m)(2) is amended by striking "10 years" and inserting "9 years".

(2) MODIFICATION OF RECAPTURE AMOUNT BASED ON TAXPAYER'S INCOME.—

(A) Subparagraph (A) of section 143(m)(4) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iii) the income percentage."

(B) Paragraph (4) of section 143(m) is amended by adding at the end thereof the following new subparagraph:

"(E) INCOME PERCENTAGE.—The term 'income percentage' means the percentage (but not greater than 100 percent) which—

"(i) the excess of—

"(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

"(II) the adjusted qualifying income for such taxable year, bears to

"(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point)."

(C)(i) Paragraph (5) of section 143(m) is amended by striking all that precedes subparagraph (C) and inserting the following:

"(5) ADJUSTED QUALIFYING INCOME; MODIFIED ADJUSTED GROSS INCOME.—

"(A) ADJUSTED QUALIFYING INCOME.—For purposes of paragraph (4), the term 'adjusted qualifying income' means the product of—

"(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

"(ii) 1.05 to the nth power where 'n' equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition."

(ii) Subparagraph (C) of section 143(m)(5) is redesignated as subparagraph (B) and is amended by striking "this paragraph" and inserting "paragraph (4)".

(3) OTHER CHANGES.—

(A) Paragraph (1) of section 143(m) is amended by striking "increased by" and all that follows and inserting "increased by the lesser of—

"(A) the recapture amount with respect to such indebtedness, or

"(B) 50 percent of the gain (if any) on the disposition of such interest."

(B) Paragraph (6) of section 143(m) is amended—

(i) by striking "LIMITATION" in the heading and inserting "SPECIAL RULES RELATING TO LIMITATION",

(ii) by striking the first sentence of subparagraph (A), and

(iii) by striking "the preceding sentence" in subparagraph (A) and inserting "paragraph (1)".

(C) Clause (ii) of section 143(m)(7)(B) is amended to read as follows:

"(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided."

26 USC 143 note.

(d) EFFECTIVE DATES.—

(1) BONDS.—The amendment made by subsection (a) shall apply to bonds issued after September 30, 1990.

(2) CERTIFICATES.—The amendment made by subsection (b) shall apply to elections for periods after September 30, 1990.

(3) SIMPLIFICATION.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 11409. QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

26 USC 144 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after September 30, 1990.

SEC. 11410. HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7107 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2). 26 USC 162 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989. 26 USC 162 note.

SEC. 11411. EXPENSES FOR DRUGS FOR RARE CONDITIONS.

Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

Subtitle E—Energy Incentives

PART I—MODIFICATIONS OF EXISTING CREDITS

SEC. 11501. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.

(a) EXTENSION.—Section 29(f)(1) of the Internal Revenue Code of 1986 (relating to application of section) is amended—

(1) by striking "1991" in clauses (i) and (ii) of subparagraph (A) and inserting "1993", and

(2) by striking "2001" in subparagraph (B) and inserting "2003".

(b) MODIFICATION WITH RESPECT TO GAS FROM TIGHT FORMATIONS.—

(1) IN GENERAL.—Subparagraph (B) of section 29(c)(2) of such Code is amended to read as follows:

"(B) SPECIAL RULES FOR GAS FROM TIGHT FORMATIONS.—The term 'gas produced from a tight formation' shall only include gas from a tight formation—

"(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

"(ii) which is produced from a well drilled after such date of enactment."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to gas produced after December 31, 1990. 26 USC 29 note.

(c) COORDINATION WITH ENHANCED OIL RECOVERY CREDIT.—

(1) IN GENERAL.—Section 29(b) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) CREDIT REDUCED FOR ENHANCED OIL RECOVERY CREDIT.—The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

"(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of

any enhanced oil recovery credit determined under section 43 with respect to such project, over

"(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year."

26 USC 29 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1990.

SEC. 11502. CREDIT FOR SMALL PRODUCERS OF ETHANOL; MODIFICATION OF ALCOHOL FUELS CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 40(a) (relating to alcohol used as fuel) is amended—

(1) by striking the period at the end of paragraph (2) and inserting ", plus", and

(2) by adding at the end thereof the following new paragraph:

"(3) in the case of an eligible small ethanol producer, the small ethanol producer credit."

(b) SMALL ETHANOL PRODUCER CREDIT.—Subsection (b) of section 40 is amended—

(1) by redesignating paragraph (4) as paragraph (5),

(2) by inserting after paragraph (3) the following new paragraph:

"(4) SMALL ETHANOL PRODUCER CREDIT.—

"(A) IN GENERAL.—The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

"(B) QUALIFIED ETHANOL FUEL PRODUCTION.—For purposes of this paragraph, the term 'qualified ethanol fuel production' means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

"(i) is sold by such producer to another person—

"(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

"(II) for use by such other person as a fuel in a trade or business, or

"(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

"(ii) is used or sold by such producer for any purpose described in clause (i).

"(C) LIMITATION.—The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

"(D) ADDITIONAL DISTILLATION EXCLUDED.—The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation."; and

(3) by striking "AND ALCOHOL CREDIT" in the heading for such subsection and inserting ", ALCOHOL CREDIT, AND SMALL ETHANOL PRODUCER CREDIT".

(c) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—Section 40 is amended by adding at the end thereof the following new subsection:

"(g) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section—

"(1) ELIGIBLE SMALL ETHANOL PRODUCER.—The term 'eligible small ethanol producer' means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 30,000,000 gallons.

"(2) AGGREGRATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 30,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(3) PARTNERSHIP, S CORPORATIONS, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

"(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

"(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

"(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 30,000,000 gallons of alcohol during the taxable year, or

"(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year."

(d) ALCOHOL NOT USED AS FUEL.—

(1) IN GENERAL.—Section 40(d)(3) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) PRODUCER CREDIT.—If—

"(i) any credit was determined under subsection (a)(3), and

"(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol."

(2) CONFORMING AMENDMENT.—Section 40(d)(3)(D), as redesignated by paragraph (1), is amended by striking "subparagraph (A) or (B)" and inserting "subparagraph (A), (B), or (C)".

(e) REDUCED CREDIT FOR ETHANOL BLENDERS.—

(1) IN GENERAL.—Section 40, as amended by subsection (c), is amended by adding at the end thereof the following new subsection:

"(h) REDUCED CREDIT FOR ETHANOL BLENDERS.—In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

"(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

"(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

"(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'."

(2) CONFORMING AMENDMENT.—Section 40(b) is amended by inserting ", and except as provided in subsection (h)" in the matter preceding paragraph (1) thereof.

(f) TERMINATION.—Subsection (e) of section 40 is amended to read as follows:

"(e) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to any sale or use—

"(A) for any period after December 31, 2000, or

"(B) for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.

"(2) NO CARRYOVERS TO CERTAIN YEARS AFTER EXPIRATION.—If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs."

(g) CONFORMING AMENDMENTS TO TARIFF SCHEDULE.—

(1) Heading 9901.00.50 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) is amended—

(A) by striking "15.85¢" each place it appears and inserting "14.27¢",

(B) by striking "12.6¢" and inserting "11.34¢", and

(C) by striking the date in the effective period column and inserting "Before 10/1/2000, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

(2) Heading 9901.00.52 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "6.66¢" each place it appears and inserting "5.99¢",

(B) by striking "5.29¢" and inserting "4.76¢", and

(C) by striking "The earlier of 12/31/92, or the date on which Treasury regulation § 1.40-1 is withdrawn or declared invalid." in the effective period column and inserting: "Before the earlier of 10/1/2000, or the date on which Treas. Reg. § 1.40-1 is withdrawn or declared invalid, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

26 USC 40 note.

(h) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

(2) The amendments made by subsection (g) shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.

PART II—ENHANCED OIL RECOVERY CREDIT

SEC. 11511. TAX CREDIT FOR ENHANCED OIL RECOVERY.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. ENHANCED OIL RECOVERY CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

"(b) PHASE-OUT OF CREDIT AS CRUDE OIL PRICES INCREASE.—

"(1) IN GENERAL.—The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

"(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

"(B) $6.

"(2) REFERENCE PRICE.—For purposes of this subsection, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(3) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

"(i) $28, multiplied by

"(ii) the inflation adjustment factor for such calendar year.

"(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term 'GNP implicit price deflator' means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

"(c) QUALIFIED ENHANCED OIL RECOVERY COSTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified enhanced oil recovery costs' means any of the following:

"(A) Any amount paid or incurred during the taxable year for tangible property—

"(i) which is an integral part of a qualified enhanced oil recovery project, and

"(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

"(B) Any intangible drilling and development costs—

"(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

"(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(C) Any qualified tertiary injectant expenses which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable under section 193 for the taxable year.

"(2) QUALIFIED ENHANCED OIL RECOVERY PROJECT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified enhanced oil recovery project' means any project—

"(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

"(ii) which is located within the United States (within the meaning of section 638(1)), and

"(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

"(B) CERTIFICATION.—A project shall not be treated as a qualified enhanced oil recovery project unless the operator submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

"(3) AT-RISK LIMITATION.—For purposes of determining qualified enhanced oil recovery costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

"(4) SPECIAL RULE FOR CERTAIN GAS DISPLACEMENT PROJECTS.—For purposes of this section, immiscible non-hydrocarbon gas displacement shall be treated as a tertiary recovery method under section 193(b)(3).

"(d) OTHER RULES.—

"(1) DISALLOWANCE OF DEDUCTION.—Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

"(2) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) ELECTION TO HAVE CREDIT NOT APPLY.—

"(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

"(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe."

(b) ADDITION TO GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Section 38(b) (defining current year business credit) is amended by striking "plus" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(6) the enhanced oil recovery credit under section 43(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF ENHANCED OIL RECOVERY CREDIT BEFORE 1991.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 43(a) (relating to enhanced oil recovery credit) may be carried to a taxable year beginning before January 1, 1991."

(3) DEDUCTION FOR UNUSED CREDIT.—Section 196(c) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(5) the enhanced oil recovery credit determined under section 43(a)."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 43. Enhanced oil recovery credit."

(2) Subsection (m) of section 6501 is amended by striking "44B" each place it appears and inserting "43 or 44B".

(d) EFFECTIVE DATES.— 26 USC 43 note.

(1) IN GENERAL.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990.

PART III—MODIFICATIONS OF PERCENTAGE DEPLETION

SEC. 11521. PERCENTAGE DEPLETION PERMITTED AFTER TRANSFER OF PROVEN PROPERTY.

(a) IN GENERAL.—Subsection (c) of section 613A (relating to limitations on percentage depletion in the case of oil and gas wells) is

amended by striking paragraphs (9) and (10) and by redesignating paragraphs (11), (12), and (13) as paragraphs (9), (10), and (11), respectively.

(b) TECHNICAL AMENDMENT.—Paragraph (11) of section 613A(c), as redesignated by subsection (a), is amended by striking subparagraphs (C) and (D).

26 USC 613A note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after October 11, 1990.

SEC. 11522. NET INCOME LIMITATION ON PERCENTAGE DEPLETION INCREASED FROM 50 PERCENT TO 100 PERCENT OF PROPERTY NET INCOME FOR OIL AND GAS PROPERTIES.

(a) IN GENERAL.—The second sentence of subsection (a) of section 613 (relating to percentage depletion) is amended by inserting "(100 percent in the case of oil and gas properties)" after "50 percent".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 613A(c)(7) is amended by striking "50-percent" and inserting "taxable income".

(2) Section 614(d) is amended by striking "50 percent" and inserting "taxable income".

26 USC 613 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11523. INCREASE IN PERCENTAGE DEPLETION ALLOWANCE FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Paragraph (6) of section 613A(c) is amended to read as follows:

"(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

"(A) IN GENERAL.—Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

"(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

"(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

"(B) ELECTION TO HAVE PARAGRAPH APPLY TO PRO RATA PORTION OF MARGINAL PRODUCTION.—If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the percentage (not greater than 25 percent) equal to the sum of—

"(i) 15 percent, plus

"(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(D) MARGINAL PRODUCTION.—The term 'marginal production' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

"(i) is a stripper well property for the calendar year in which the taxable year begins, or

"(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

"(E) STRIPPER WELL PROPERTY.—For purposes of this paragraph, the term 'stripper well property' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

"(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

"(ii) the number of such wells,

is 15 barrel equivalents or less.

"(F) HEAVY OIL.—For purposes of this paragraph, the term 'heavy oil' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

"(G) AVERAGE DAILY MARGINAL PRODUCTION.—For purposes of this subsection—

"(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

"(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property."

(b) CONFORMING AMENDMENTS.—Section 613A(c)(3)(A) is amended—

(1) by striking clause (ii) and inserting:

"(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.", and

(2) by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990. 26 USC 613A note.

PART IV—MINIMUM TAX TREATMENT

SEC. 11531. SPECIAL ENERGY DEDUCTION FOR MINIMUM TAX.

(a) IN GENERAL.—Section 56 (relating to adjustments in computing alternative minimum taxable income) is amended by adding at the end thereof the following new subsection:

"(h) ADJUSTMENT BASED ON ENERGY PREFERENCES.—

"(1) IN GENERAL.—In computing the alternative minimum taxable income of any taxpayer other than an integrated oil company for any taxable year beginning after 1990, there shall be allowed as a deduction an amount equal to the lesser of—

"(A) the alternative tax energy preference deduction, or

"(B) 40 percent of alternative minimum taxable income.

"(2) PHASE-OUT OF DEDUCTION AS OIL PRICES INCREASE.—The amount of the deduction under paragraph (1) (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as—

"(A) the excess of the reference price of crude oil for the calendar year preceding the calendar year in which the taxable year begins over $28, bears to

"(B) $6.

For purposes of this paragraph, the reference price for any calendar year shall be determined under section 29(d)(2)(C) and the $28 amount under subparagraph (A) shall be adjusted at the same time and in the same manner as under section 43(b)(3).

"(3) ALTERNATIVE TAX ENERGY PREFERENCE DEDUCTION.—For purposes of paragraph (1), the term 'alternative tax energy preference deduction' means an amount equal to the sum of—

"(A) in the case of the intangible drilling cost preference, an amount equal to the sum of—

"(i) 75 percent of the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(ii) 15 percent of the excess (if any) of—

"(I) the intangible drilling cost preference, over

"(II) the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(B) 50 percent of the marginal production depletion preference.

"(4) INTANGIBLE DRILLING COST PREFERENCE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'intangible drilling cost preference' means the amount by which alternative minimum taxable income would be reduced if it were computed without regard to section 57(a)(2) and subsection (g)(4)(D)(i).

"(B) PORTION ATTRIBUTABLE TO QUALIFIED EXPLORATORY COSTS.—For purposes of subparagraph (A), the portion of the intangible drilling cost preference attributable to qualified exploratory costs is an amount which bears the same ratio to the intangible drilling cost preference as—

"(i) the qualified exploratory costs of the taxpayer for the taxable year, bear to

"(ii) the total intangible drilling and development costs with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(5) MARGINAL PRODUCTION DEPLETION PREFERENCE.—For purposes of this subsection, the term 'marginal production depletion preference' means the amount by which alternative minimum taxable income would be reduced if it were computed as if section 57(a)(1) and subsection (g)(4)(G) did not apply to any allowance for depletion determined under section 613A(c)(6).

"(6) QUALIFIED EXPLORATORY COSTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified exploratory costs' means intangible drilling and development costs of a taxpayer other than an integrated oil company which—

"(i) the taxpayer may elect to deduct as expenses under section 263(c), and

"(ii) are paid or incurred in connection with the drilling of an exploratory well located in the United States (within the meaning of section 638(1)).

"(B) EXPLORATORY WELL.—The term 'exploratory well' means any of the following oil or gas wells:

"(i) An oil or gas well which is completed (or if not completed, with respect to which drilling operations cease) before the completion of any other well which—

"(I) is located within 1.25 miles from the well, and

"(II) is capable of production in commercial quantities.

"(ii) An oil or gas well which is not described in clause (i) but which has a total depth which is at least 800 feet below the deepest completion depth of any well within 1.25 miles which is capable of production in commercial quantities.

"(iii) An oil or gas well capable of production in commercial quantities which is not described in clause (i) or (ii) but which is completed into a new reservoir, except that this clause shall not apply to a gas well if the gas is produced (or to be produced) from Devonian shale, coal seams, or a tight formation (determined in a manner similar to the manner under section 29(c)(2)).

A well shall not be treated as an exploratory well unless the operator submits to the Secretary (at such time and in such manner as the Secretary may provide) a certification from a petroleum engineer that the well is described in one of the preceding clauses.

"(C) CERTAIN COSTS NOT INCLUDED.—The term 'qualified exploratory costs' shall not include any cost paid or incurred—

"(i) in constructing, acquiring, transporting, erecting, or installing an offshore platform, or

"(ii) with respect to the drilling of a well from an offshore platform unless it is the first well which penetrates a reservoir.

"(D) INTEGRATED OIL COMPANY.—For purposes of this paragraph, the term 'integrated oil company' means, with respect to any taxable year, any producer of crude oil to

whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

"(7) SPECIAL RULES.—

"(A) ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of paragraphs (1)(B), (4)(A), and (5), alternative minimum taxable income shall be determined without regard to the deduction allowable under this subsection and the alternative tax net operating loss deduction under subsection (a)(4).

"(B) GEOTHERMAL DEPOSITS.—For purposes of this subsection, intangible drilling and development costs shall not include costs with respect to wells drilled for any geothermal deposits (as defined in section 613(e)(3)).

"(8) REGULATIONS.—The Secretary may by regulation provide for appropriate adjustments in computing alternative minimum taxable income or adjusted current earnings for any taxable year following a taxable year for which a deduction was allowed under this subsection to ensure that no double benefit is allowed by reason of such deduction."

(b) CONFORMING AMENDMENTS.—

(1) Section 56(d)(1)(A) is amended to read as follows:

"(A) the amount of such deduction shall not exceed the excess (if any) of—

"(i) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under subsection (h), over

"(ii) the deduction under subsection (h), and".

(2) Section 59(a)(2)(A)(ii) is amended by inserting "and the alternative tax energy preference deduction under section 56(h)" after "deduction".

(3) Section 59A(b)(1) is amended by inserting "or the alternative tax energy preference deduction under section 56(h)" before ", and".

26 USC 56 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

Subtitle F—Small Business Incentives

PART I—TREATMENT OF ESTATE TAX FREEZES

SEC. 11601. REPEAL OF SECTION 2036(c).

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(b) CONFORMING AMENDMENTS.—

(1) Section 2207B is amended—

(A) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively,

(B) by striking "subsections (a) and (b)" in subsection (c) (as so redesignated) and inserting "subsection (a)", and

(C) by striking "subsections (a), (b), and (c)" in subsection (c) (as so redesignated) and inserting "subsections (a) and (b)".

(2) Section 2501(d) is amended by striking paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of property transferred after December 17, 1987. 26 USC 2036 note.

SEC. 11602. SPECIAL VALUATION RULES.

(a) IN GENERAL.—Subtitle B is amended by adding at the end thereof the following new chapter:

"CHAPTER 14—SPECIAL VALUATION RULES

"SEC. 2701. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF CERTAIN INTERESTS IN CORPORATIONS OR PARTNERSHIPS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

"(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

"(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

"(2) EXCEPTIONS FOR MARKETABLE RETAINED INTERESTS, ETC.—Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

"(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

"(B) such interest is of the same class as the transferred interest, or

"(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

"(3) VALUATION OF RIGHTS TO WHICH PARAGRAPH (1) APPLIES.—

"(A) IN GENERAL.—The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

"(B) VALUATION OF QUALIFIED PAYMENTS.—If—

"(i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and

"(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

"(4) MINIMUM VALUATION OF JUNIOR EQUITY.—

"(A) IN GENERAL.—In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

"(i) the total value of all of the equity interests in such entity, plus

"(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) JUNIOR EQUITY INTEREST.—The term 'junior equity interest' means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital are junior to the rights of all other classes of equity interests.

"(ii) EQUITY INTEREST.—The term 'equity interest' means stock or any interest as a partner, as the case may be.

"(b) APPLICABLE RETAINED INTERESTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable retained interest' means any interest in an entity with respect to which there is—

"(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

"(B) a liquidation, put, call, or conversion right.

"(2) CONTROL.—For purposes of paragraph (1)—

"(A) CORPORATIONS.—In the case of a corporation, the term 'control' means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

"(B) PARTNERSHIPS.—In the case of a partnership, the term 'control' means—

"(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

"(ii) in the case of a limited partnership, the holding of any interest as a general partner.

"(c) DISTRIBUTION AND OTHER RIGHTS; QUALIFIED PAYMENTS.—For purposes of this section—

"(1) DISTRIBUTION RIGHT.—

"(A) IN GENERAL.—The term 'distribution right' means—

"(i) a right to distributions from a corporation with respect to its stock, and

"(ii) a right to distributions from a partnership with respect to a partner's interest in the partnership.

"(B) EXCEPTIONS.—The term 'distribution right' does not include—

"(i) a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)),

"(ii) any liquidation, put, call, or conversion right, or

"(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

"(2) LIQUIDATION, ETC. RIGHTS.—

"(A) IN GENERAL.—The term 'liquidation, put, call, or conversion right' means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

"(B) EXCEPTION FOR FIXED RIGHTS.—

"(i) IN GENERAL.—The term 'liquidation, put, call, or conversion right' does not include any right which must be exercised at a specific time and at a specific amount.

"(ii) TREATMENT OF CERTAIN RIGHTS.—If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

"(C) EXCEPTION FOR CERTAIN RIGHTS TO CONVERT.—The term 'liquidation, put, call, or conversion right' does not include any right which—

"(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),

"(ii) is nonlapsing,

"(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and

"(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

"(3) QUALIFIED PAYMENT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified payment' means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

"(B) TREATMENT OF VARIABLE RATE PAYMENTS.—For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

"(C) ELECTIONS.—

"(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in

such election to treat such payments as payments which are not qualified payments.

"(ii) ELECTION TO HAVE INTEREST TREATED AS QUALIFIED PAYMENT.—A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

"(iii) ELECTIONS IRREVOCABLE.—Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

"(d) TRANSFER TAX TREATMENT OF CUMULATIVE BUT UNPAID DISTRIBUTIONS.—

"(1) IN GENERAL.—If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) applied, the following shall be increased by the amount determined under paragraph (2):

"(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

"(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A) (ii) or (iii).

"(2) AMOUNT OF INCREASE.—

"(A) IN GENERAL.—The amount of the increase determined under this paragraph shall be the excess (if any) of—

"(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

"(I) all such payments were paid on the date payment was due, and

"(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

"(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

"(B) LIMITATION ON AMOUNT OF INCREASE.—

"(i) IN GENERAL.—The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

"(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

"(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

"(I) the number of shares in the corporation held (as of the date of the taxable event) by the trans-

feror which are applicable retained interests of the same class, by

"(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

"(iii) DEFINITION.—For purposes of this subparagraph, the term 'equity interest' has the meaning given such term by subsection (a)(4)(B).

"(C) GRACE PERIOD.—For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

"(3) TAXABLE EVENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'taxable event' means any of the following:

"(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

"(ii) The transfer of such applicable retained interest.

"(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to the period ending on the date of such payment.

"(B) EXCEPTION WHERE SPOUSE IS TRANSFEREE.—

"(i) DEATHTIME TRANSFERS.—Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

"(ii) LIFETIME TRANSFERS.—A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of—

"(I) any deduction allowed under section 2523, or

"(II) consideration for the transfer provided by the spouse.

"(iii) SPOUSE SUCCEEDS TO TREATMENT OF TRANSFEROR.—If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

"(4) SPECIAL RULES FOR APPLICABLE FAMILY MEMBERS.—

"(A) FAMILY MEMBER TREATED IN SAME MANNER AS TRANSFEROR.—For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) applied.

"(B) TRANSFER TO APPLICABLE FAMILY MEMBER.—In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this

subsection to distributions accumulating with respect to such interest after such taxable event.

"(5) TRANSFER TO INCLUDE TERMINATION.—For purposes of this subsection, any termination of an interest shall be treated as a transfer.

"(e) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) a lineal descendant of the transferor or the transferor's spouse, and

"(C) the spouse of any such descendant.

"(2) APPLICABLE FAMILY MEMBER.—The term 'applicable family member' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) an ancestor of the transferor or the transferor's spouse, and

"(C) the spouse of any such ancestor.

"(3) ATTRIBUTION RULES.—

"(A) INDIRECT HOLDINGS AND TRANSFERS.—An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

"(B) CONTROL.—For purposes of subsections [81] (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants.

"(4) EFFECT OF ADOPTION.—A relationship by legal adoption shall be treated as a relationship by blood.

"(5) CERTAIN CHANGES TREATED AS TRANSFERS.—Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

"(A) receives an applicable retained interest in such entity pursuant to such contribution to capital or such redemption, recapitalization, or other change, or

"(B) under regulations, otherwise holds, immediately after the transfer, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

"(6) ADJUSTMENTS.—Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation.

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[81] So in original. Probably should be "subsection".

"(7) TREATMENT AS SEPARATE INTERESTS.—The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

"SEC. 2702. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN TRUSTS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

"(2) VALUATION OF RETAINED INTERESTS.—

"(A) IN GENERAL.—The value of any retained interest which is not a qualified interest shall be treated as being zero.

"(B) VALUATION OF QUALIFIED INTEREST.—The value of any retained interest which is a qualified interest shall be determined under section 7520.

"(3) EXCEPTIONS.—

"(A) IN GENERAL.—This subsection shall not apply to any transfer—

"(i) to the extent such transfer is an incomplete transfer, or

"(ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

"(B) INCOMPLETE TRANSFER.—For purposes of subparagraph (A), the term 'incomplete transfer' means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

"(b) QUALIFIED INTEREST.—For purposes of this section, the term 'qualified interest' means—

"(1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

"(2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

"(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

"(c) CERTAIN PROPERTY TREATED AS HELD IN TRUST.—For purposes of this section—

"(1) IN GENERAL.—The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

"(2) JOINT PURCHASES.—If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired

by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

"(3) TERM INTEREST.—The term 'term interest' means—

"(A) a life interest in property, or

"(B) an interest in property for a term of years.

"(4) VALUATION RULE FOR CERTAIN TERM INTERESTS.—If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

"(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

"(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

"(d) TREATMENT OF TRANSFERS OF INTERESTS IN PORTION OF TRUST.—In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

"(e) MEMBER OF THE FAMILY.—For purposes of this section, the term 'member of the family' shall have the meaning given such term by section 2704(c)(2).

"SEC. 2703. CERTAIN RIGHTS AND RESTRICTIONS DISREGARDED.

"(a) GENERAL RULE.—For purposes of this subtitle, the value of any property shall be determined without regard to—

"(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

"(2) any restriction on the right to sell or use such property.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

"(1) It is a bona fide business arrangement.

"(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

"(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

"SEC. 2704. TREATMENT OF CERTAIN LAPSING RIGHTS AND RESTRICTIONS.

"(a) TREATMENT OF LAPSED VOTING OR LIQUIDATION RIGHTS.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

"(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

"(2) AMOUNT OF TRANSFER.—For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

"(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

"(B) the value of such interests immediately after the lapse.

"(3) SIMILAR RIGHTS.—The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

"(b) CERTAIN RESTRICTIONS ON LIQUIDATION DISREGARDED.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

"(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

"(2) APPLICABLE RESTRICTION.—For purposes of this subsection, the term 'applicable restriction' means any restriction—

"(A) which effectively limits the ability of the corporation or partnership to liquidate, and

"(B) with respect to which either of the following applies:

"(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

"(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

"(3) EXCEPTIONS.—The term 'applicable restriction' shall not include—

"(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

"(B) any restriction imposed, or required to be imposed, by any Federal or State law.

"(4) OTHER RESTRICTIONS.—The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONTROL.—The term 'control' has the meaning given such term by section 2701(b)(2).

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any individual—

"(A) such individual's spouse,

"(B) any ancestor or lineal descendant of such individual or such individual's spouse,

"(C) any brother or sister of the individual, and

"(D) any spouse of any individual described in subparagraph (B) or (C).

"(3) ATTRIBUTION.—The rule of section 2701(e)(3)(A) shall apply for purposes of determining the interests held by any individual."

(b) EXTENSION OF STATUTE OF LIMITATIONS.—Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

(c) CONFORMING AMENDMENT.—The table of chapters for subtitle B is amended by adding at the end thereof the following item:

"CHAPTER 14. Special Valuation Rules."

26 USC 2701 note.

(d) STUDY.—The Secretary of the Treasury shall conduct a study of—

(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

26 USC 2701 note.

(e) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—The amendments made by subsection (a)—

(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

(i) any failure to exercise a right of conversion,

(ii) any failure to pay dividends, and

(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts after October 8, 1990. 26 USC 6501 note.

PART II—DISABLED ACCESS CREDIT

SEC. 11611. CREDIT FOR COST OF PROVIDING ACCESS FOR DISABLED INDIVIDUALS.

(a) GENERAL RULE.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by subtitle E, is amended by adding at the end thereof the following new section:

"SEC 44. EXPENDITURES TO PROVIDE ACCESS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means any person if—

"(1) either—

"(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

"(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

"(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

"(c) ELIGIBLE ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible access expenditures' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CERTAIN EXPENDITURES INCLUDED.—The term 'eligible access expenditures' includes amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

"(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

"(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

"(D) to acquire or modify equipment or devices for individuals with disabilities, or

"(E) to provide other similar services, modifications, materials, or equipment.

"(3) EXPENDITURES MUST BE REASONABLE.—Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

"(4) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible access expenditures' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

"(5) EXPENDITURES MUST MEET STANDARDS.—The term 'eligible access expenditures' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

"(d) DEFINITION OF DISABILITY; SPECIAL RULES.—For purposes of this section—

"(1) DISABILITY.—The term 'disability' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(3) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(4) SHORT YEARS.—The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

"(5) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(6) TREATMENT OF PREDECESSORS.—The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

"(7) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

"(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

"(B) no increase in the adjusted basis of any property shall result from such amount.

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section."

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38, as amended by subtitle E, is amended by striking "plus" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", plus" and by adding at the end thereof the following new paragraph:

"(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF SECTION 44 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44."

(c) DEDUCTION REDUCED FOR ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—Section 190(c) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking "$35,000" and inserting "$15,000".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by subtitle E, is amended by adding at the end thereof the following new item:

"Sec. 44. Expenditures to provide access to disabled individuals."

(e) EFFECTIVE DATES.— 26 USC 38 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—OTHER PROVISIONS

SEC. 11621. REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.

(a) GENERAL RULE.—Subsection (f) of section 7805 (relating to review of impact of regulations on small business) is amended to read as follows:

"(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

"(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

"(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regula-

tion which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

"(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

"(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

"(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

"(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation."

26 USC 7805 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act.

SEC. 11622. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7523. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

"(a) GENERAL RULE.—In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

"(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

"(2) a pie-shaped graph showing the relative sizes of the major income categories.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of subsection (a)—

"(1) MAJOR OUTLAY CATEGORIES.—The term 'major outlay categories' means the following:

"(A) Defense, veterans, and foreign affairs.

"(B) Social security, medicare, and other retirement.

"(C) Physical, human, and community development.

"(D) Social programs.

"(E) Law enforcement and general government.

"(F) Interest on the debt.

"(2) MAJOR INCOME CATEGORIES.—The term 'major income categories' means the following:

"(A) Social security, medicare, and unemployment and other retirement taxes.

"(B) Personal income taxes.

"(C) Corporate income taxes.

"(D) Borrowing to cover the deficit.

"(E) Excise, customs, estate, gift, and miscellaneous taxes.

"(3) REQUIRED FOOTNOTES.—The pie-shaped graph showing the major outlay categories shall include the following footnotes:

"(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

"(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

"(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, food stamps, and aid to families with dependent children and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

"(4) DATA ON WHICH GRAPHS ARE BASED.—The graphs required under subsection (a) shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7523. Graphic presentation of major categories of Federal outlays and income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to instructions prepared for taxable years beginning after 1990. 26 USC 7523 note.

Subtitle G—Tax Technical Corrections

SEC. 11700. COORDINATION WITH OTHER SUBTITLES. 26 USC 1 note.

For purposes of applying the amendments made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

SEC. 11701. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1989.

(a) AMENDMENTS RELATED TO SECTION 7108.—

(1)(A) Paragraph (2) of section 42(c) is amended by adding at the end thereof the following new sentence: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

(B) Paragraph (1) of section 42(b) is amended by striking the last sentence.

(2) Subclause (I) of section 42(d)(5)(C)(ii) is amended—

(A) by inserting "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", and

(B) by inserting before the period "for such year".

(3)(A) Clause (i) of section 42(g)(2)(D) is amended by inserting before the period "and such unit continues to be rent-restricted".

26 USC 42 note.

(B) In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) does not apply, such amendment shall apply to—

(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act, and

(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.

(4) Clause (ii) of section 42(g)(2)(D) is amended by adding at the end thereof the following new sentence: "In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'."

(5)(A) Subparagraph (A) of section 42(g)(3) is amended by striking "the 12-month period beginning on the date the building is placed in service" and inserting "the 1st year of the credit period for such building".

26 USC 42 note.

(B) In the case of a building to which the amendment made by subparagraph (A) does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.

(6)(A) The second sentence of section 42(h)(3)(C) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(B) Subclause (II) of section 42(h)(3)(D)(ii) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(7)(A) Clause (i) of section 42(h)(6)(B) is amended by inserting before the comma "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)".

(B) Clause (ii) of section 42(h)(6)(B) is amended by striking "requirement" and inserting "requirement and prohibitions".

(8)(A) Subparagraph (B) of section 42(h)(6) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

"(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,".

(B) Paragraph (6) of section 42(h) is amended by striking subparagraph (J) and by redesignating subparagraphs (K) and (L) as subparagraphs (J) and (K), respectively.

(C) Subclause (II) of section 42(h)(6)(E)(ii) is amended by inserting before the period "not otherwise permitted under this section".

(D) Subparagraph (F) of section 42(h)(6) is amended by inserting "the nonlow-income portion of the building for fair market value and" before "the low-income portion".

(9) Subclause (I) of section 42(h)(6)(E)(i) is amended by inserting before the comma "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period".

(10) Paragraph (8) of section 42(i) is redesignated as paragraph (7).

(11) Paragraph (2) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting before the period "but only with respect to bonds issued after such date". 26 USC 42 note.

(12) Paragraph (6) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting "after" after "issued".

(b) AMENDMENTS RELATED TO SECTION 7202.—

(1) Subparagraph (A) of section 163(e)(5) is amended by striking the last sentence and inserting the following: "For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid."

(2) Paragraph (3) of section 163(i) is amended—

(A) by striking "(or stock)" each place it appears in subparagraph (B), and

(B) by adding at the end thereof the following new sentence: "Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock."

(c) AMENDMENTS RELATED TO SECTION 7210.—

(1) Subparagraph (C) of section 163(j)(2) is amended by striking "less such" and inserting "reduced (but not below zero) by such".

(2) Clause (ii) of section 163(j)(2)(A) is amended by striking "and on such other days" and inserting "or on any other day".

(d) AMENDMENTS RELATED TO SECTION 7211.—Clause (iii) of section 172(b)(1)(M) is amended—

(1) by striking "a C corporation" in the material preceding subclause (I),

(2) by striking "which acquires" in subclause (I) and inserting "a C corporation which acquires",

(3) by striking "a corporation" in subclause (II) and inserting "a C corporation", and

(4) by striking "any successor corporation" in subclause (III) and inserting "any C corporation which is a successor".

(e) AMENDMENTS RELATED TO SECTION 7301.—

(1) Paragraph (2) of section 4978B(e) is amended to read as follows:

"(2) SECTION 133 SECURITIES.—The term 'section 133 securities' means employer securities acquired by an employee stock ownership plan in a transaction to which section 133 applied."

(2) Subsection (d) of section 4978B is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH OTHER TAXES.—This section shall not apply to any disposition which is subject to tax under section 4978 or section 4978A (as in effect on the day before the date of enactment of this section)."

(f) AMENDMENT RELATED TO SECTION 7401.—Paragraph (2) of section 6038(e) is amended by adding at the end thereof the following new sentence: "In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period."

(g) AMENDMENTS RELATED TO SECTION 7506.—

(1) The material preceding subclause (I) in section 4682(d)(3)(B)(i) is amended by striking "or produced" and inserting ", produced, or imported".

(2) Subclause (I) of section 4682(d)(3)(B)(i) is amended to read as follows:

"(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),".

(3) Subclause (II) of section 4682(d)(3)(B)(i) is amended by striking "tax imposed" and inserting "tax which would (but for this subsection and subsection (g)) be imposed".

(4) Clause (i) of section 4682(d)(3)(B) is amended by striking the period at the end of subclause (II) and inserting ", and" and by adding at the end thereof the following new subclause:

"(III) the aggregate tax which was imposed by this subchapter with respect to ozone-depleting chemicals imported by such person during the calendar year.".

(5) The last sentence of clause (ii) of section 4682(d)(3)(B) is amended to read as follows: "The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).".

(h) AMENDMENT RELATED TO SECTION 7601.—Effective with respect to transfers after August 3, 1990, paragraph (3) of section 1031(f) is amended by striking "section 267(b)" and inserting "section 267(b) or 707(b)(1)".

(i) AMENDMENT RELATED TO SECTION 7622.—Paragraph (4) of section 1253(d) is amended by striking "or any period of amortization under this section" and inserting "under this section or any period of amortization under this subtitle for any payment described in this section".

(j) AMENDMENTS RELATED TO SECTION 7652.—

(1) Subclause (II) of section 148(f)(4)(B)(i) is amended to read as follows:

"(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund)."

(2) The last sentence of clause (i) of section 148(f)(4)(B) is amended by striking "replacement fund" and all that follows and inserting "replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably

anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only."

(3) Paragraph (4) of section 148(f) is amended—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) EXCEPTION FROM REBATE FOR CERTAIN PROCEEDS TO BE USED TO FINANCE CONSTRUCTION EXPENDITURES.—

"(i) IN GENERAL.—In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

"(ii) SPENDING REQUIREMENTS.—The spending requirements of this clause are met if at least—

"(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

"(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

"(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

"(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

"(iii) EXCEPTION FOR REASONABLE RETAINAGE.—The spending requirement of clause (ii)(IV) shall be treated as met if—

"(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

"(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

"(iv) CONSTRUCTION ISSUE.—For purposes of this subparagraph, the term 'construction issue' means any issue if—

"(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

"(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term 'construction' includes reconstruction and rehabilitation, and

rules similar to the rules of section 142(b)(1)(B) shall apply.

"(v) PORTIONS OF ISSUES USED FOR CONSTRUCTION.—If—

"(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

"(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

"(vi) AVAILABLE CONSTRUCTION PROCEEDS.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'available construction proceeds' means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

"(II) EARNINGS ON RESERVE INCLUDED ONLY FOR CERTAIN PERIODS.—The term 'available construction proceeds' shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

"(III) PAYMENTS ON ACQUIRED PURPOSE OBLIGATIONS EXCLUDED.—The term 'available construction proceeds' shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

"(IV) ELECTION TO REBATE ON EARNINGS ON RESERVE.—At the election of the issuer, the term 'available construction proceeds' shall not include earnings on any reasonably required reserve or replacement fund.

"(vii) ELECTION TO PAY PENALTY IN LIEU OF REBATE.—

"(I) IN GENERAL.—At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

"(II) TERMINATION.—The penalty imposed by this clause shall cease to apply only as provided in

clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

"(viii) ELECTION TO TERMINATE 1½ PERCENT PENALTY.—At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

"(I) 3 PERCENT PENALTY.—The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

"(II) YIELD RESTRICTION AT CLOSE OF TEMPORARY PERIOD.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

"(III) REDEMPTION OF BONDS AT EARLIEST CALL DATE.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

"(ix) ELECTION TO TERMINATE 1½ PERCENT PENALTY BEFORE END OF TEMPORARY PERIOD.—If—

"(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

"(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

"(III) the issuer has made the election under clause (viii), and

"(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

"(x) FAILURE TO PAY PENALTIES.—In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the

Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

"(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

"(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

"(xi) ELECTION FOR POOLED FINANCING BONDS.—At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

"(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

"(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

"(xii) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

"(xiii) REFUNDING BONDS.—

"(I) IN GENERAL.—Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

"(II) DETERMINATION OF CONSTRUCTION PORTION OF ISSUE.—For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

"(III) COORDINATION WITH REBATE REQUIREMENT ON REFUNDING BONDS.—The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

"(xiv) DETERMINATION OF INITIAL TEMPORARY PERIOD.—For purposes of this subpargraph, the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

"(xv) ELECTIONS.—Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

"(xvi) TIME FOR PAYMENT OF PENALTIES.—Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates."

(4) Clause (iv) of section 148(f)(4)(B) is amended to read as follows:

"(iv) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue."

(5) Subparagraph (D) of section 148(c)(2) is amended—

(A) by striking "subsection (f)(4)(B)(iv)(IV)" and inserting "subsection (f)(4)(C)(iv)", and

(B) by striking "subsection (f)(4)(B)(iv)(VIII)" and inserting "subsection (f)(4)(C)(v)".

(6) Subsection (c) of section 7652 of the 1989 Act is amended by striking "Subparagraph (A) of section 148(c)(2)" and inserting "Section 148(c)(2)". 26 USC 148.

(7) In the case of a bond issued before the date of the enactment of this Act, the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment. 26 USC 148 note.

(8) Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990. 26 USC 148 note.

(k) AMENDMENT RELATED TO SECTION 7811.—The second sentence of section 403(b)(12)(A) is amended by inserting "involving a one-time irrevocable election" after "similar arrangement".

(l) AMENDMENTS RELATED TO SECTION 7815.—

(1) Subsection (d) of section 2056 is amended by redesignating the paragraph relating to reformations permitted as paragraph (5).

(2) The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act. 26 USC 2056 note.

(3) Paragraph (16) of section 7815(d) of the Revenue Reconciliation Act of 1989 is amended by inserting "(or would have been so treated if the donor were a citizen of the United States)" after "of such Code". 26 USC 2040 note.

(m) AMENDMENT RELATED TO SECTION 7881.—Paragraph (13) of section 4975(d) is amended by inserting before the semicolon at the end thereof the following: "or which is exempt from section 406 of such Act by reason of section 408(b) of such Act".

(n) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 to which such amendment relates. 26 USC 42 note.

SEC. 11702. AMENDMENTS RELATED TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988.

(a) AMENDMENTS RELATED TO SECTION 1006.—

(1) Paragraph (5) of section 367(a) is amended by striking "section 361" and inserting "subsection (a) or (b) of section 361".

(2) Subsection (d) of section 453B is amended to read as follows:

"(d) EXCEPTION FOR DISTRIBUTIONS TO WHICH SECTION 337(a) APPLIES.—Subsection (a) shall not apply to any distribution to which section 337(a) applies."

(b) AMENDMENTS RELATED TO SECTION 1008.—

(1) Subparagraph (B) of section 447(g)(4) is amended to read as follows:

"(B) QUALIFIED FARMING TRADE OR BUSINESS.—

"(i) IN GENERAL.—The term 'qualified farming trade or business' means the trade or business of farming—

"(I) sugar cane,

"(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

"(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

"(ii) EFFECT OF ELECTION.—For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

"(iii) ELECTION.—Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary."

(2) Subparagraph (A) of section 447(g)(1) is amended by striking "qualified farming trade or business" and inserting "trade or business of farming".

(c) AMENDMENT RELATED TO SECTION 1012.—Subsection (b) of section 6114 is amended by striking "by regulations".

(d) AMENDMENTS RELATED TO SECTION 1014.—

(1) Subparagraph (B) of section 59(j)(1) is amended by inserting "(or, if greater, the child's share of the unused parental minimum tax exemption)" before the period at the end thereof.

(2) Subsection (j) of section 59 is amended by adding at the end thereof the following new paragraph:

"(3) UNUSED PARENTAL MINIMUM TAX EXEMPTION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'unused parental minimum tax exemption' means the excess (if any) of—

"(i) the exemption amount applicable to the parent under section 55(d), over

"(ii) the parent's alternative minimum taxable income.

"(B) CERTAIN RULES MADE APPLICABLE.—A child's share of any unused parental minimum tax exemption shall be

determined under rules similar to the rules of section 1(i)(3)(B), and rules similar to the rules of paragraphs (3)(D) and (5) of section 1(i) shall apply for purposes of this paragraph."

(3) Subparagraph (D) of section 59(j)(2), is amended by striking "paragraphs (5) and (6)" and inserting "paragraphs (3)(D), (5), and (6)".

(e) AMENDMENTS RELATED TO SECTION 1018.—

(1) Subsection (e) of section 468B is amended by striking "This section" and inserting "This section (other than subsection (g))".

(2) Subsection (c) of section 355 is amended to read as follows:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1)."

(f) AMENDMENT RELATED TO SECTION 3011.—Paragraph (1) of section 4980B(d) is amended to read as follows:

"(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,".

(g) AMENDMENTS RELATED TO SECTION 5033.—

(1) Subsection (i) of section 2523 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6)."

(2)(A) Paragraph (1) of section 2056A(a) is amended to read as follows:

"(1) the trust instrument—

"(A) requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

"(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,".

(B) Subsection (b) of section 2056A is amended by adding at the end thereof the following new paragraphs:

"(14) COORDINATION WITH TERMINABLE INTEREST RULES.—Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

"(15) NO TAX ON CERTAIN DISTRIBUTIONS.—No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust."

(3)(A) Subsection (d) of section 2056A is amended by adding at the end thereof the following new sentence: "No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return."

26 USC 2056A note.

(B) The amendment made by subparagraph (A) shall not apply to any election made before the date 6 months after the date of the enactment of this Act.

(4) Subparagraph (A) of section 2056A(b)(10) is amended by striking "section 2032" and inserting "section 2011, 2014, 2032".

(5) Paragraph (3) of section 2056(d) is amended by striking "section 2056A(b)(6)" and inserting "section 2056A(b)(7)".

(h) AMENDMENTS RELATED TO SECTION 6009.—

(1) Subparagraph (B) of section 135(b)(2) is amended by striking "each dollar amount" and inserting "the $40,000 and $60,000 amounts".

(2) Subparagraph (C) of section 135(b)(2) is amended by striking "(A) or".

(i) AMENDMENTS RELATED TO SECTION 6282.—Subsection (e) of section 216 is amended—

(1) by striking "ASSOCIATIONS" in the subsection heading and inserting "CORPORATIONS", and

(2) by striking "association" and inserting "corporation".

26 USC 59 note.

(j) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 to which such amendment relates.

SEC. 11703. MISCELLANEOUS AMENDMENTS.

(a) SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—

(1) IN GENERAL.—Subsection (a) of section 1043 is amended by striking "reduced by any basis adjustment under subsection (c)

attributable to a prior sale" and inserting "to the extent not previously taken into account under this subsection".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales after November 30, 1989. 26 USC 1043 note.

(b) CONFORMING AMENDMENT TO REPEAL OF SECTION 89.—

(1) IN GENERAL.—Subparagraph (B) of section 414(n)(2) is amended by striking "(6 months in the case of core health benefits)".

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986. 26 USC 414 note.

(c) AMENDMENTS TO GENERATION-SKIPPING TRANSFER TAX.—

(1) Subparagraph (B) of section 2642(c)(2) is amended by striking "such individual dies before the trust is terminated" and inserting "the trust does not terminate before the individual dies".

(2) Paragraph (2) of section 2642(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

(3) Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990. 26 USC 2601 note.

(4) The amendments made by paragraphs (1) and (2) shall apply to transfers after March 31, 1988. 26 USC 2642 note.

(d) TREATMENT OF CERTAIN PARTNERSHIP INTEREST UNDER SECTION 1031.—

(1) IN GENERAL.—Paragraph (2) of section 1031(a) is amended by adding at the end thereof the following new sentence: "For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers after July 18, 1984. 26 USC 1031 note.

(e) TREATMENT OF CERTAIN SEPARATED EMPLOYEES.—

(1) IN GENERAL.—Paragraph (6) of section 79(d) is amended by striking "any retired employee" and inserting "any former employee".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to employees separating from service after the date of the enactment of this Act. 26 USC 79 note.

(f) TREATMENT OF CERTAIN MEDICAL CARE REIMBURSEMENTS UNDER WAGE WITHHOLDING.—

(1) IN GENERAL.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6))."

26 USC 3401 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 but shall not apply to any amount paid before the date of the enactment of this Act which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.

(g) TREATMENT OF CERTAIN INTERESTS UNDER WINDFALL PROFIT TAX.—

(1) IN GENERAL.—Paragraph (1) of section 1879(o) of the Tax Reform Act of 1986 is amended by striking "held by" and inserting "held by the Protestant Episcopal Church Foundation of the Diocese of Oklahoma or held by".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 1879(o) of the Tax Reform Act of 1986.

SEC. 11704. MISCELLANEOUS CLERICAL CHANGES.

(a) GENERAL RULE.—

(1) Clause (ii) of section 56(g)(4)(D) is amended by striking "year" and inserting "years".

(2) The heading of subparagraph (B) of section 172(m)(4) is amended by striking "SUBSECTION (B)(2)" and inserting "SUBSECTION (b)(2)".

(3) Paragraph (2) of section 351(e) is amended by striking "are used" and inserting "is used".

(4) The heading of subparagraph (B) of section 413(c)(7) is amended by striking "ASSET" and inserting "ASSETS".

(5) Subparagraph (C) of section 461(i)(3) is amended to read as follows:

"(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii))."

(6) Subparagraph (A) of section 469(m)(3) is amended by striking "preenactment" and inserting "pre-enactment".

(7) Subsection (c) of section 597 is amended by striking "The purposes of" and inserting "For purposes of".

(8) The last sentence of subsection (a) of section 860D is amended by inserting a closing parenthesis before the period at the end thereof.

(9) Subparagraph (A) of section 860G(a)(3) is amended by striking the comma after "secured".

(10) Subparagraph (B) of section 927(g)(2) is amended by striking "prescribed" and inserting "prescribe".

(11) Paragraph (1) of section 936(e) is amended by striking "subsection (a)(1)" each place it appears and inserting "subsection (a)(2)".

(12) Subparagraph (C) of section 1017(b)(4) is amended by striking "subparagraph" and inserting "subparagraphs".

(13) The material preceding subparagraph (A) of section 1245(a)(3) is amended by striking "or (3)" and inserting "or (3))".

(14) Paragraph (2) of section 1441(b) is amended by inserting "section" before "170(b)(1)(A)(ii)".

(15) Clause (ii) of section 2056A(b)(2)(B) is amended by striking "therefore" and inserting "therefor".

(16) The item relating to section 2056A in the table of sections for part IV of subchapter A of chapter 11 is amended by striking "trusts" and inserting "trust".

(17) Subclause (I) of section 2642(d)(2)(B)(i) is amended by striking "state" and inserting "State".

(18) The heading of chapter 23A is amended by striking "**CHAPTER 23A. RAILROAD**" and inserting "**CHAPTER 23A—RAILROAD**".

(19) Paragraphs (9) and (10) of section 3231(e) are redesignated as paragraphs (8) and (9), respectively.

(20) Subparagraph (D) of section 4093(c)(4) is amended by striking "reduced tax sale" and inserting "reduced-tax sale".

(21) Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(22) Paragraph (3) of section 6013(e) is amended by striking "section 6661(b)(2)(A)" and inserting "section 6662(d)(2)(A)".

(23) Subsection (c) of section 6038A is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(24) Paragraph (3) of section 6039D(d) is amended by striking all that follows "plan (and not" and inserting "the employer)."

(25) Paragraph (4) of section 6045(e) is amended by striking "broker" and inserting "reporting person".

(26) The heading for subsection (a) of section 6323 is amended by striking "PURCHASES" and inserting "PURCHASERS".

(27) Subsection (a) of section 6332 is amended by striking "subsections (b) and (c)" and inserting "this section".

(28) The last sentence of section 6655(g)(3) is amended by striking all that follows: "'11 months'" and inserting "in clause (i)(IV)."

(29) Paragraph (3) of section 7519(c) is amended by striking "payable on later of" and inserting "payable on the later of".

(30) The section 7521 added by section 6233 of the Technical and Miscellaneous Revenue Act of 1988 is redesignated as section 7522.

(31) The table of sections for chapter 77 is amended by striking the item added by such section 6233 and inserting the following:

"Sec. 7522. *Content of tax due, deficiency, and other notices.*"

(32) Subparagraph (B) of section 7608(c)(1) is amended by striking the comma after "operations".

(33) Subparagraph (C) of section 7608(c)(5) is amended—

(A) by striking "interested" in clause (i)(I) and inserting "interest", and

(B) by striking "title 3" in clause (ii) and inserting "title 31".

(34) Subparagraph (C) of section 7701(j)(1) is amended by striking so much of such subparagraph as precedes "contributions to the Thrift" and inserting the following:

"(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8),".

(35) Paragraph (1) of section 1012(t) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "(as amended by paragraph (2))" after "clause (ii)". 26 USC 892.

(36) Subparagraph (F) of section 1014(g)(4) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "subparagraph" in clause (ii) and inserting "paragraph". 26 USC 892.

26 USC 857.

(37) Paragraph (28) of section 1018(u) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "net" before "capital loss" each place it appears.

26 USC 4091.

(38) Subparagraph (C) of section 2001(d)(6) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "a gallon" and inserting "per gallon".

(39) Paragraph (3) of section 5033(a) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "chapter 1" and inserting "chapter 11".

45 USC 231n note.

(40) Paragraph (2) of section 232(a) of the Railroad Retirement Revenue Act of 1983 is amended by striking "section 516(b)" each place it appears and inserting "section 7106(b)".

26 USC 56 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Repeal of Expired or Obsolete Provisions

PART I—REPEAL OF EXPIRED OR OBSOLETE PROVISIONS

Subpart A—General Provisions

SEC. 11801. REPEAL OF EXPIRED OR OBSOLETE PROVISIONS.

(a) REPEALS.—The following provisions are hereby repealed:

(1) Section 23 (relating to residential energy credit).

(2) Paragraph [82] (1), (2), (3), and (4) of section 39(d) (relating to transitional rules).

(3) Subsection (f) of section 56 (relating to adjustments for book income of corporations).

(4) Subsection (h) of section 63 (relating to transitional rule for taxable years beginning in 1987).

(5) Subsection (i) of section 83 (relating to transitional rules).

(6) Section 110 (relating to income tax paid by lessee corporation).

(7) Section 113 (relating to mustering-out payments for members of the Armed Forces).

(8) Section 114 (relating to sports programs conducted for the American National Red Cross).

(9) Section 124 (relating to qualified transportation provided by employers).

(10) Section 128 (relating to interest on certain savings certificates).

(11) Subsection (i) of section 170 (relating to rule for nonitemization of deductions).

(12) Section 184 (relating to amortization of certain railroad rolling stock).

(13) Section 188 (relating to amortization of certain expenditures for child care facilities).

(14) Subsection (d) of section 190 (relating to application of section).

(15) Section 250 (relating to certain payments to the National Railroad Passenger Corporation).

(16) Subsection (b) of section 263 (relating to expenditures for advertising and good will).

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[82] So in original. Probably should be "Paragraphs".

(17) Subsection (e) of section 305 (relating to dividend reinvestment in stock of public utilities).

(18) Subsection (h) of section 306 (relating to stock received in transactions to which 1939 Code applies).

(19) Part IV of subchapter C of chapter 1 (relating to insolvency reorganizations).

(20) Section 422 (relating to qualified stock options).

(21) Section 424 (relating to restricted stock options).

(22) Subsection (d) of section 503 (relating to special rule for loans).

(23) Paragraph (14) of section 512(b) (relating to modifications applicable in computing unrelated business taxable income).

(24) Subsection (c) of section 545 (relating to special adjustment to taxable income).

(25) Paragraphs (2), (3), and (4) of section 582(c) (relating to bond, etc., losses and gains of financial institutions).

(26) Paragraph (2) of section 585(b) (relating to percentage method).

(27) Subsection (i) of section 617 (relating to certain pre-1970 exploration expenditures).

(28) Part II of subchapter I of chapter 1 (relating to payments to encourage exploration, etc., for defense purposes).

(29) Subparagraphs (C) and (D) of section 861(a)(1) (relating to source rule for interest).

(30) Subsection (k) of section 897 (relating to foreign corporations acquired before enactment).

(31) Subsection (e) of section 904 (relating to transitional rules for carrybacks and carryovers on the per-country limitation).

(32) Subsections (e) and (f)(3)(C) of section 907 (relating to transitional rules).

(33) Section 1039 (relating to certain sales of low-income housing projects).

(34) Part VIII of subchapter O of chapter 1 (relating to distributions pursuant to Bank Holding Company Act).

(35) Section 1238 (relating to amortization in excess of depreciation).

(36) Subsection (c) of section 1401 (relating to credit against self-employment taxes).

(37) Chapter 4 (relating to rules applicable to recovery of excessive profits on Government contracts).

(38) Section 1564 (relating to transitional rules in the case of certain controlled corporations).

(39) Subsection (b) of section 2010 (relating to phase-in of credit).

(40) Subsection (b) of section 2505 (relating to phase-in of credit).

(41) Paragraph (3) of section 3402(a) (relating to changes made by section 101 of the Economic Recovery Tax Act of 1981).

(42) Section 3510 (relating to credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984).

(43) Paragraph (3) of section 6018(a) (relating to phase-in of filing requirement amount).

(44) Section 6158 (relating to installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970).

(45) Subchapter E of chapter 64 (relating to collection of State individual income taxes).

(46) Subsection (e) of section 6427 (relating to use in certain taxicabs).

(47) Section 6428 (relating to 1981 rate reduction tax credit).

(48) Chapter 37 (relating to excise tax on sugar).

(b) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 23.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the items relating to sections 110, 113, 114, 124, and 128.

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking the items relating to sections 184 and 188.

(4) The table of sections for part VIII of subchapter B of chapter 1 is amended by striking the item relating to section 250.

(5) The table of parts for subchapter C of chapter 1 is amended by striking the item relating to part IV.

(6) The table of sections for part II of subchapter D of chapter 1 is amended by striking the items relating to sections 422 and 424.

(7) The table of parts for subchapter I of chapter 1 is amended by striking the item relating to part II.

(8) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1039.

(9) The table of parts for subchapter O of chapter 1 is amended by striking the item relating to part VIII.

(10) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the item relating to section 1238.

(11) The table of chapters for subtitle A is amended by striking the item relating to chapter 4.

(12) The table of sections for part II of subchapter B of chapter 6 is amended by striking the item relating to section 1564.

(13) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6158.

(14) The table of subchapters for chapter 64 is amended by striking the item relating to subchapter E.

(15) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6428.

(16) The table of sections for chapter 25 is amended by striking the item relating to section 3510.

(17) The table of chapters for subtitle D is amended by striking the item relating to chapter 37.

(c) CONFORMING AMENDMENTS.—

(1) AMENDMENT RELATING TO REPEAL OF SECTION 23.—Subsection (a) of section 1016 is amended by striking paragraph (20) and by redesignating the following paragraphs accordingly.

(2) AMENDMENTS RELATING TO REPEAL OF SECTION 56(f).—

(A) Paragraph (1) of section 56(c) is amended to read as follows:

"(1) ADJUSTMENT FOR ADJUSTED CURRENT EARNINGS.—Alternative minimum taxable income shall be adjusted as provided in subsection (g)."

(B) Paragraphs (1) and (2) of section 59(g) are each amended by striking "beginning after 1989".

(C) Clause (iii) of section 56(g)(4)(C) is amended to read as follows:

"(iii) TREATMENT OF TAXES ON DIVIDENDS FROM 936 CORPORATIONS.—

"(I) IN GENERAL.—For purposes of determining the alternative minimum foreign tax credit, 75 percent of any withholding or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

"(II) LIMITATION.—If the aggregate amount of the dividends referred to in subclause (I) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as tax paid to a foreign country under subclause (I) shall not exceed the amount which would be so treated without regard to this subclause multiplied by a fraction the numerator of which is the excess referred to in paragraph (1) and the denominator of which is the aggregate amount of such dividends.

"(III) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this clause, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated)."

(D) Paragraph (1) of section 59(a) is amended by inserting "and" at the end of subparagraph (B), by striking subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(E) Paragraph (2) of section 59A(b) is amended by striking "(and the last sentence of section 56(f)(2)(B))".

(3) AMENDMENT RELATING TO REPEAL OF SECTION 124.—Subsection (f) of section 125 is amended by striking "section 117, 124," and inserting "section 117,".

(4) AMENDMENT RELATING TO REPEAL OF SECTION 128.—Paragraph (2) of section 265(a) is amended by striking "subtitle" and all that follows down through the period at the end thereof and inserting "subtitle."

(5) AMENDMENT RELATING TO REPEAL OF SECTION 170(i).—Section 170 is amended by redesignating subsections (j), (k), (l), (m), and (n) as subsections (i), (j), (k), (l), and (m), respectively.

(6) AMENDMENTS RELATING TO REPEAL OF AMORTIZATION PROVISIONS.—

(A) Subsection (a) of section 48 is amended by striking paragraph (8).

(B) Subsection (f) of section 642 is amended by striking "sections 169, 184, 187, and 188" and inserting "section 169".

(C) Paragraph (2) of section 861(e) is amended by striking "referred to in subparagraph (B) of section 184(d)(1)" and inserting "all of whose stock is owned by one or more domestic common carriers by railroad".

(D) Subparagraph (B) of section 1082(a)(2) is amended by striking "169, 184, or 188" and inserting "169".

(E) Subparagraph (C) of section 1245(a)(3) is amended by striking "188," and inserting "188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),".

(F) Paragraph (3) of section 1250(b) is amended by striking "188," and inserting "188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),".

(7) AMENDMENTS RELATING TO REPEAL OF SECTION 305(e).—

(A) Paragraph (1) of section 305(d) is amended by striking "(other than subsection (e))".

(B) Subsection (f) of section 305 is redesignated as subsection (e).

(8) AMENDMENTS RELATED TO REPEAL OF SPECIAL TREATMENT OF INSOLVENCY REORGANIZATIONS.—

(A) Subsection (b) of section 47 is amended by inserting "or" at the end of paragraph (1), by striking out ", or" at the end of paragraph (2), and inserting a period, and by striking paragraph (3).

(B) Subparagraph (B) of section 168(i)(7) is amended by striking "371(a), 374(a),".

(C) Subparagraph (D) of section 247(b)(2) is amended by striking ", a transaction to which section 371 (relating to insolvency reorganization) applies,".

(D) Subsection (d) of section 354 is hereby repealed.

(E) Clause (i) of section 356(d)(2)(B) is amended by striking "or (d)".

(F)(i) Section 357 is amended by striking "351, 361, 371, or 374" each place it appears and inserting "351 or 361".

(ii) Paragraph (2) of section 357(c) is amended by inserting "or" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(G) Section 358 is amended—

(i) in subsection (a), by striking "361, 371(b), or 374" and inserting "or 361", and

(ii) by striking subsection (b)(3).

(H) Paragraph (3) of section 1245(b) is amended by striking "371(a), 374(a),".

(I) Paragraph (3) of section 1250(d) is amended by striking "371(a), 374(a),".

(9) AMENDMENTS RELATING TO REPEAL OF SECTIONS 422 AND 424.—

(A)(i) Section 422A is redesignated as section 422 and section 425 is redesignated as section 424.

(ii) The table of sections for part II of subchapter D of chapter 1 is amended by redesignating the items relating to sections 422A and 425 as items relating to sections 422 and 424, respectively.

(B) Section 421 is amended—

(i) in subsection (a)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)",

(II) by striking "except as provided in section 422(c)(1)," in paragraph (1), and

(III) by striking "425(a)" in paragraph (2) and inserting "424(a)";

(ii) in subsection (b)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)", and

(II) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)," and inserting "422(a)(1) or 423(a)(1),";

(iii) in subsection (c)—

(I) by striking "422(a), 422A(a), 423(a), and 424(a)" in paragraph (1)(A) and inserting "422(a) and 423(a)",

(II) by striking "sections 423(c) and 424(c)(1)" in paragraph (1)(B) and inserting "section 423(c)",

(III) by striking "422(c)(1), 423(c), or 424(c)(1)" each place it appears in paragraphs (2) and (3)(A) and inserting "423(c)",

(IV) by striking "sections 422(c)(1), 423(c), and 424(c)(1)" in paragraph (3)(B) and inserting "section 423(c)", and

(V) by striking "such sections" in paragraph (3)(B) and inserting "such section".

(C) Section 422 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a)(2) and inserting "424(a)", and

(ii) by striking paragraph (5) of subsection (c) and by redesignating paragraphs (6), (7), and (8), of subsection (c) as paragraphs (5), (6), and (7), respectively.

(D) Subsection (a) of section 423 is amended—

(i) by striking "(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))", and

(ii) by striking "425(a)" and inserting "424(a)".

(E) Subsection (b) of section 423 is amended by striking "425(d)" in paragraph (3) and inserting "424(d)".

(F) Section 424 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a) and inserting "424(a)",

(ii) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)" in subsection (c)(3)(A)(ii) and inserting "422(a)(1) or 423(a)(1)",

(iii) by striking "422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)" in subsection (d) and inserting "422(b)(6) and 423(b)(3)",

(iv) in subsection (g)—

(I) by striking "422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)" and inserting "422(a)(2) and 423(a)(2)", and

(II) by striking "425(a)" and inserting "424(a)", and

(v) in subsection (h)—

(I) by striking paragraph (2) and inserting the following:

"(2) SPECIAL RULE FOR SECTION 423 OPTIONS.—In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

"(A) the fair market value of such stock on the date of the original granting of the option,

"(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

"(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal."

(II) by striking "sections 422(b)(6), 423(b)(9), and 424(b)(2)" in paragraph (3)(B) and inserting "section 423(b)(9)", and

(III) by striking the sentence following paragraph (3)(C).

(G) Paragraph (3) of section 56(b) is amended—

(i) by striking "section 422A" and inserting "section 422", and

(ii) by striking "section 422A(c)(2)" and inserting "section 422(c)(2)".

(H) Clause (ii) of section 1042(c)(2)(B) is amended by striking "section 83, 422, 422A, 423, or 424 applies" and inserting "section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)".

(I)(i) Subparagraph (B) of section 402(a)(3) is amended by striking "section 425" and inserting "section 424".

(ii) Clause (i) of section 402(a)(6)(B) is amended by striking "section 425(f)" and inserting "section 424(f)".

(J) Section 6039 is amended—

(i) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

"(1) which in any calendar year transfers a share of stock pursuant to such person's exercise of an incentive stock option, or

"(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock),",

(ii) by striking "a qualified stock option, incentive stock option, a restricted stock option, or an" in subsection (b)(1) and inserting "an incentive stock option or an", and

(iii) by amending subsection (c) to read as follows:

"(c) CROSS REFERENCES.—

"For definition of—

"(1) the term 'incentive stock option', see section 422(b), and

"(2) the term 'employee stock purchase plan' see section 423(b)."

(10) AMENDMENTS RELATING TO REPEAL OF SECTION 545(c).—

(A) Paragraph (15) of section 381(c) is hereby repealed.

(B) Section 545 is amended by redesignating subsection (d) as subsection (c).

(11) AMENDMENTS RELATING TO REPEAL OF PARAGRAPHS (2), (3), AND (4) OF SECTION 582(c).—Subsection (c) of section 582 is amended—

(A) by striking "paragraph (5)" in paragraph (1) and inserting "paragraph (2)", and

(B) by redesignating paragraph (5) as paragraph (2).

(12) AMENDMENTS RELATING TO REPEAL OF SECTION 585 (b) (2).—

(A) Paragraph (4) of section 57(a) is amended by striking "585 or".

(B) Subparagraph (A) of section 291(e)(1) is hereby repealed.

(C) Paragraph (1) of section 585(b) is amended by striking "shall not exceed" and all that follows down through the period at the end thereof and inserting "shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2)."

(D) Subsection (b) of section 585 is amended by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(E) Paragraph (3) of section 585(b) (as redesignated by subparagraph (A)) is amended to read as follows:

"(3) REGULATIONS; DEFINITION OF LOAN.—The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section."

(F) Paragraphs (1) (A) and (E) of section 593(b) are each amended by striking "section 585(b)(3)" and inserting "section 585(b)(2)".

(13) AMENDMENT RELATING TO REPEAL OF SECTION 617 (i).—Section 617 is amended by redesignating subsection (j) as subsection (i).

(14) AMENDMENTS RELATING TO REPEAL OF SECTION 861 (a)(1) (C) AND (D).—Paragraph (1) of section 861(a) is amended by inserting "and" at the end of subparagraph (A) and by striking the comma at the end of subparagraph (B) and inserting a period.

(15) AMENDMENTS RELATING TO REPEAL OF SECTION 1039.—

(A) Paragraphs (1)(A)(i) and (2)(B)(ii) of section 1250(a) are each amended by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 1039(b)(1)(B)".

(B) Subsection (d) of section 1250 is amended by striking paragraph (8).

(C) Section 1250 is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(16) AMENDMENT RELATING TO REPEAL OF SECTION 1401 (c).—Section 1401 is amended by redesignating subsection (d) as subsection (c).

(17) AMENDMENTS RELATING TO RENEGOTIATION PROVISIONS.—

(A) Section 6422 is amended by striking paragraph (6) and redesignating the succeeding paragraphs accordingly.

(B) Subparagraph (A) of section 6511(d)(2) is amended by striking "; except that" and all that follows down through

the period at the end of the first sentence and inserting a period.

(C) Section 6515 is amended by striking paragraph (2) and redesignating the succeeding paragraphs accordingly.

(18) AMENDMENT RELATING TO REPEAL OF SECTION 1564.—Paragraph (5) of section 535(c) is amended by striking "sections 1561 and 1564" and inserting "section 1561".

(19) AMENDMENTS RELATED TO REPEAL OF UNIFIED CREDIT PHASE-IN PROVISIONS.—

(A) Section 2010 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(B) Section 2505 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(C) Subsection (a) of section 6018 is amended by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(20) AMENDMENTS RELATED TO REPEAL OF SECTION 6158.—

(A) Section 6503 is amended by striking subsection (h) and redesignating subsections (i), (j), and (k) as subsections (h), (i), and (j), respectively.

(B) Paragraph (2) of section 6601(b) is amended—

(i) by striking "or 6158(a)" in the material preceding subparagraph (A),

(ii) by striking "or 6158(a), as the case may be" in subparagraph (A), and

(iii) by striking the last sentence.

(21) AMENDMENTS RELATING TO REPEAL OF SUBCHAPTER E OF CHAPTER 64.—

(A) Section 6405 is amended by striking subsection (d).

(B) Section 7463 is amended by striking subsection (f).

(22) AMENDMENTS RELATING TO REPEAL OF CHAPTER 37.—

(A) Subsection (b) of section 6302 is amended by striking "chapter 21" and all that follows down through "chapter 37," and inserting "chapter 21, 31, 32, or 33, or by section 4481".

(B)(i) Section 6418 is hereby repealed.

(ii) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6418.

(C) Subsection (e) of section 6511 is hereby repealed.

(D)(i) Section 7240 is hereby repealed.

(ii) The table of sections for part II of subchapter A of chapter 75 is amended by striking the item relating to section 7240.

(E)(i) Subsection (a) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(ii) Subsection (b) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(23) AMENDMENTS RELATED TO REPEAL OF SECTION 6427(e).—

(A) Paragraph (1) of section 6427(i) is amended by striking "(e),".

(B) Subparagraph (A) of section 6427(i)(2) is amended to read as follows:

"(A) IN GENERAL.—If $1,000 or more is payable under subsections (a), (b), (d), (g), (h), and (q) to any person with respect to fuel used (or a qualified diesel powered highway

vehicle purchased) during any of the first 3 quarters of his taxable year, a claim may be filed under this section with respect to fuel used (or a qualified diesel powered highway vehicle purchased), during such quarter."

(C) Paragraph (2) of section 6427(i) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

SEC. 11802. MISCELLANEOUS PROVISIONS.

(a) REPEAL OF SECTION 72(t)(2)(C).—Subsection (t) of section 72 is amended—

(1) by striking subparagraph (C) of paragraph (2),

(2) by redesignating subparagraph (D) of paragraph (2) as subparagraph (C), and

(3) by striking "(C), and (D)" in paragraph (3)(A) and inserting "and (C)".

(b) REPEAL OF OBSOLETE PROVISIONS IN SECTION 274.—

(1) Paragraph (2) of section 274(l) is amended to read as follows:

"(2) SKYBOXES, ETC.—In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease."

(2) Subsection (n) of section 274 is amended—

(A) in paragraph (2)—

(i) by striking subparagraph (D) and redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively,

(ii) by striking "described in subparagraph (E)" and inserting "described in subparagraph (D)", and

(iii) by striking "of subparagraph (F)" and inserting "of subparagraph (E)", and

(B) by striking paragraph (3).

(c) REPEAL OF SECTION 468(a)(2)(B)(ii).—Subparagraph (B) of section 468(a)(2) is amended to read as follows:

"(B) INCREASE FOR INTEREST.—A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

"(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

"(ii) by compounding semiannually."

(d) REPEAL OF OBSOLETE PROVISIONS IN SECTION 556(b)(1).—

(1) Paragraph (1) of section 556(b) is amended by striking the last 2 sentences.

(2) The amendment made by paragraph (1) shall not apply to any corporation with respect to which an election under the second sentence of section 556(b)(1) of the Internal Revenue Code of 1986 (as in effect before the amendment made by paragraph (1)) is in effect unless such corporation elects to have such amendment apply and agrees to such adjustments as the Secretary of the Treasury or his delegate may require. 26 USC 556 note.

(e) ELIMINATION OF UNNECESSARY SECTION RELATING TO JURY DUTY PAY REMITTED TO EMPLOYER.—

(1) Paragraph (13) of section 62(a) is amended to read as follows:

"(13) JURY DUTY PAY REMITTED TO EMPLOYER.—Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term 'jury pay' means any payment received by the individual for the discharge of jury duty."

(2) Part VII of subchapter B of chapter 1 is amended by striking out section 220 and redesignating section 221 as section 220.

(3) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the items relating to sections 220 and 221 and inserting in lieu thereof the following:

"Sec. 220. Cross reference."

(f) OTHER PROVISIONS.—

(1) Section 541 is amended by striking "(38.5 percent in the case of taxable years beginning in 1987)".

(2) Subsection (e) of section 665 is amended to read as follows:

"(e) PRECEDING TAXABLE YEAR.—For purposes of this subpart—

"(1) In the case of a foreign trust created by a United States person, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply.

"(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies."

(3) Subsection (c) of section 668 is amended to read as follows:

"(c) INTEREST CHARGE NOT DEDUCTIBLE.—The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title."

(4) Paragraph (1) of section 1503(c) is amended by striking the last 2 sentences thereof.

(5) Paragraph (2) of section 2032A(a) is amended to read as follows:

"(2) LIMITATION ON AGGREGATE REDUCTION IN FAIR MARKET VALUE.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $750,000."

Subpart B—Modifications to Specific Provisions

SEC. 11811. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 172.

(a) GENERAL RULE.—Subsection (b) of section 172 is amended to read as follows:

"(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

"(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

"(i) shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

"(ii) shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss.

"(B) SPECIAL RULES FOR REIT'S.—

"(i) IN GENERAL.—A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

"(ii) SPECIAL RULE.—In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

"(iii) REIT YEAR.—For purposes of this subparagraph, the term 'REIT year' means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

"(C) SPECIFIED LIABILITY LOSSES.—In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

"(D) BAD DEBT LOSSES OF COMMERCIAL BANKS.—In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

"(E) EXCESS INTEREST LOSS.—

"(i) IN GENERAL.—If—

"(I) there is a corporate equity reduction transaction, and

"(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

"(ii) LOSS LIMITATION YEAR.—For purposes of clause (i) and subsection (m), the term 'loss limitation year' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

"(iii) APPLICABLE CORPORATION.—For purposes of clause (i), the term 'applicable corporation' means—

"(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

"(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

"(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

"(iv) OTHER DEFINITIONS.—

"For definitions of terms used in this subparagraph, see subsection (h).

"(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the 'loss year') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

"(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

"(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

"(3) ELECTION TO WAIVE CARRYBACK.—Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year."

(b) CONFORMING AMENDMENTS.—

(1) Section 172 is amended by striking subsections (g), (h), (i), and (k), and by redesignating subsections (j), (l), (m), and (n) as subsections (f), (g), (h), and (i), respectively.

(2)(A) Subsection (f) of section 172 (as redesignated by paragraph (1)) is amended to read as follows:

"(f) RULES RELATING TO SPECIFIED LIABILITY LOSS.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified liability loss' means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

"(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

"(i) product liability, or

"(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

"(B) Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

"(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

"(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

"(2) LIMITATION.—The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

"(3) SPECIAL RULE FOR NUCLEAR POWERPLANTS.—Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

"(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

"(B) ending with the taxable year preceding the loss year.

"(4) PRODUCT LIABILITY.—The term 'product liability' means—

"(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

"(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(5) COORDINATION WITH SUBSECTION (b)(2).—For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

"(6) ELECTION.—Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year."

(B) The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A). 26 USC 172 note.

(3) Paragraph (2) of section 172(g) (as redesignated by paragraph (1)) is amended to read as follows:

"(2) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated."

(4) Subparagraph (B) of section 172(h)(4) (as redesignated by paragraph (1)) is amended to read as follows:

"(B) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2)

"(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

"(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account."

26 USC 172 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to net operating losses for taxable years beginning after December 31, 1990.

SEC. 11812. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 167.

(a) GENERAL RULE.—Section 167 is amended—

(1) by striking subsections (b), (c), (d), (e), (f), (j), (k), (l), (m), (p), and (q) and by redesignating subsections (g), (h), (r), and (s) as subsections (c), (d), (e), and (f), respectively, and

(2) by inserting after subsection (a) the following new subsection:

"(b) CROSS REFERENCE.—

"For determination of depreciation deduction in case of property to which section 168 applies, see section 168."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 167 (as redesignated by subsection (a)) is amended by striking "(h)" each place it appears in paragraphs (3)(B) and (4)(B) and inserting "(d)".

(2)(A) Subparagraph (A) of section 168(e)(2) is amended to read as follows:

"(A) RESIDENTIAL RENTAL PROPERTY.—

"(i) RESIDENTIAL RENTAL PROPERTY.—The term 'residential rental property' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) the term 'dwelling unit' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

"(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied."

(B) Paragraph (10) of section 168(i) is amended to read as follows:

"(10) PUBLIC UTILITY PROPERTY.—The term 'public utility property' means property used predominantly in the trade or business of the furnishing or sale of—

"(A) electrical energy, water, or sewage disposal services,

"(B) gas or steam through a local distribution system,

"(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

"(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof."

(C) Paragraph (2) of section 168(f) is amended by striking "section 167(l)(3)(A)" and inserting "subsection (i)(10)".

(D) Paragraph (1) of section 168(i) is amended by adding at the end thereof the following new sentence: "The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

(E) Clause (ii) of section 168(i)(9)(A) is amended by striking "(determined without regard to section 167(l))".

(3) Sections 42(d)(2)(D)(i)(I) and 42(d)(5)(B) are each amended by striking "section 167(k)" and inserting "section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(4) Subparagraph (D) of section 56(a)(1) is amended by striking "section 167(l)(3)(A)" and inserting "section 168(i)(10)".

(5) Paragraph (2) of section 312(k) is amended to read as follows:

"(2) EXCEPTION.—If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method)."

(6)(A) Paragraph (6) of section 381(c) is amended by striking "subsections (b), (j), and (k) of section 167" and inserting "sections 167 and 168".

(B) Subsection (c) of section 381 is amended by striking paragraph (24) and redesignating paragraphs (25) and (26) as paragraphs (24) and (25), respectively.

(7) Subparagraph (C) of section 404(a)(1) is amended by striking "section 167(l)(3)(A)(iii)" and inserting "section 168(i)(10)(C)".

(8) Clause (i) of section 460(e)(6)(A) is amended by striking "section 167(k)" and inserting "section 168(e)(2)(A)(ii)".

(9) Subsection (e) of section 642 is amended by striking "167(h)" and inserting "167(d)".

(10) Paragraph (2) of section 1016(a) is amended by striking "under section 167(b)(1)" and inserting "under the straight line method".

(11) Subsection (a) of section 1250 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE.—For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

(12) Paragraph (4) of section 1250(b) is amended by striking "167(k)" each place it appears and inserting "167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(13) Subparagraph (B) of section 7701(e)(5) is amended by inserting before the period at the end thereof the following: "(as in effect on the day before the date of the enactment of the Revenue Reconcilation Act of 1990)".

26 USC 42 note.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988).

SEC. 11813. ELIMINATION OF EXPIRED OR OBSOLETE INVESTMENT TAX CREDIT PROVISIONS.

(a) GENERAL RULE.—Subpart E of part IV of subchapter A of chapter 1 is amended to read as follows:

"Subpart E—Rules for Computing Investment Credit

"SEC. 46. AMOUNT OF CREDIT.

[83] For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

"(1) the rehabilitation credit,
"(2) the energy credit, and
"(3) the reforestation credit.

"SEC. 47. REHABILITATION CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

"(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

"(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

[83] So in original. Probably should be " "For".

"(b) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—

"(1) IN GENERAL.—Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

"(2) COORDINATION WITH SUBSECTION (d).—The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED REHABILITATED BUILDING.—

"(A) IN GENERAL.—The term 'qualified rehabilitated building' means any building (and its structural components) if—

"(i) such building has been substantially rehabilitated,

"(ii) such building was placed in service before the beginning of the rehabilitation,

"(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

"(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

"(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

"(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

"(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

"(B) BUILDING MUST BE FIRST PLACED IN SERVICE BEFORE 1936.—In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

"(C) SUBSTANTIALLY REHABILITATED DEFINED.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

"(I) the adjusted basis of such building (and its structural components), or

"(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes

of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

"(ii) SPECIAL RULE FOR PHASED REHABILITATION.—In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting '60-month period' for '24-month period'.

"(iii) LESSEES.—The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

"(D) RECONSTRUCTION.—Rehabilitation includes reconstruction.

"(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.—

"(A) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

"(i) for property for which depreciation is allowable under section 168 and which is—

"(I) nonresidential real property,

"(II) residential rental property,

"(III) real property which has a class life of more than 12.5 years, or

"(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'qualified rehabilitation expenditure' does not include—

"(i) STRAIGHT LINE DEPRECIATION MUST BE USED.—Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

"(ii) COST OF ACQUISITION.—The cost of acquiring any building or interest therein.

"(iii) ENLARGEMENTS.—Any expenditure attributable to the enlargement of an existing building.

"(iv) CERTIFIED HISTORIC STRUCTURE, ETC.—Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

"(I) such building was not a certified historic structure,

"(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

"(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation

of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

"(v) TAX-EXEMPT USE PROPERTY.—

"(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h)).

"(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).—This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

"(vi) EXPENDITURES OF LESSEE.—Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

"(C) CERTIFIED REHABILITATION.—For purposes of subparagraph (B), the term 'certified rehabilitation' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

"(D) NONRESIDENTIAL REAL PROPERTY; RESIDENTIAL RENTAL PROPERTY; CLASS LIFE.—For purposes of subparagraph (A), the terms 'nonresidential real property,' 'residential rental property,' and 'class life' have the respective meanings given such terms by section 168.

"(3) CERTIFIED HISTORIC STRUCTURE DEFINED.—

"(A) IN GENERAL.—The term 'certified historic structure' means any building (and its structural components) which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(B) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(i) any district listed in the National Register, and

"(ii) any district—

"(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"(d) PROGRESS EXPENDITURES.—

"(1) IN GENERAL.—In the case of any building to which this subsection applies, except as provided in paragraph (3)—

"(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

"(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

"(2) PROPERTY TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

"(i) the normal rehabilitation period for such building is 2 years or more, and

"(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

"(B) NORMAL REHABILITATION PERIOD.—For purposes of subparagraph (A), the term 'normal rehabilitation period' means the period reasonably expected to be required for the rehabilitation of the building—

"(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

"(ii) ending on the date on which it is expected that the property will be available for placing in service.

"(3) SPECIAL RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

"(A) COMPONENT PARTS, ETC.—Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

"(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

"(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

"(B) CERTAIN BORROWING DISREGARDED.—Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

"(C) LIMITATION FOR BUILDINGS WHICH ARE NOT SELF-REHABILITATED.—

"(i) IN GENERAL.—In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the

overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

"(ii) CARRY-OVER OF CERTAIN AMOUNTS.—In the case of a building which is not a self-rehabilitated building, if for the taxable year—

"(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

"(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

"(D) DETERMINATION OF PERCENTAGE OF COMPLETION.—The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

"(E) NO PROGRESS EXPENDITURES FOR CERTAIN PRIOR PERIODS.—No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

"(F) NO PROGRESS EXPENDITURES FOR PROPERTY FOR YEAR IT IS PLACED IN SERVICE, ETC.—In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

"(i) the taxable year in which the building is placed in service, or

"(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

"(4) SELF-REHABILITATED BUILDING.—For purposes of this subsection, the term 'self-rehabilitated building' means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

"(5) ELECTION.—This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

"SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT.

"(a) ENERGY CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

"(2) ENERGY PERCENTAGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the energy percentage is 10 percent.

"(B) TERMINATION.—Effective with respect to periods after December 31, 1991, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply.

"(C) COORDINATION WITH REHABILITATION CREDIT.—The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

"(3) ENERGY PROPERTY.—For purposes of this subpart, the term 'energy property' means any property—

"(A) which is—

"(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, or

"(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

"(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

"(ii) are in effect at the time of the acquisition of the property.

The term 'energy property' shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

"(4) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—

"(A) REDUCTION OF BASIS.—For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

"(i) subsidized energy financing, or

"(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subpara-

graph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

"(B) DETERMINATION OF FRACTION.—For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

"(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

"(ii) the denominator of which is the basis of the property.

"(C) SUBSIDIZED ENERGY FINANCING.—For purposes of subparagraph (A), the term 'subsidized energy financing' means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

"(5) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(b) REFORESTATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

"(2) DEFINITIONS.—For purposes of this subpart, the terms 'amortizable basis' and 'qualified timber property' have the respective meanings given to such terms by section 194.

"SEC. 49. AT-RISK RULES.

"(a) GENERAL RULE.—

"(1) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

"(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

"(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

"(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

"(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

"(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term 'credit base' means—

"(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

"(ii) the basis of any energy property, and

"(iii) the amortizable basis of any qualified timber property.

"(D) NONQUALIFIED NONRECOURSE FINANCING.—

"(i) IN GENERAL.—For purposes of this paragraph and paragraph (2), the term 'nonqualified nonrecourse financing' means any nonrecourse financing which is not qualified commercial financing.

"(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term 'qualified commercial financing' means any financing with respect to any property if—

"(I) such property is acquired by the taxpayer from a person who is not a related person,

"(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

"(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

"(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term 'nonrecourse financing' includes—

"(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

"(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a share-holder.

"(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term 'qualified person' means any person which is actively and regularly engaged in the business of lending money and which is not—

"(I) a related person with respect to the taxpayer,

"(II) a person from which the taxpayer acquired the property (or a related person to such person), or

"(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

"(v) RELATED PERSON.—For purposes of this subparagraph, the term 'related person' has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

"(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (2)—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

"(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

"(I) such financing is recourse financing (determined at the corporate level), and

"(II) such financing is provided with respect to qualified business property of such corporation.

"(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term 'qualified business property' means any property if—

"(I) such property is used by the corporation in the active conduct of a trade or business,

"(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

"(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

"(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

"(F) SPECIAL RULES FOR ENERGY PROPERTY.—Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

"(2) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

"(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

"(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.—For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

"(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

"(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

"(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

"(b) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

"(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

"(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

"(3) SPECIAL RULES FOR CERTAIN ENERGY PROPERTY.—Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"SEC. 50. OTHER SPECIAL RULES.

"(a) RECAPTURE IN CASE OF DISPOSITIONS, ETC.—Under regulations prescribed by the Secretary—

"(1) EARLY DISPOSITION, ETC.—

"(A) GENERAL RULE.—If, during any taxable year, investment credit property is disposed of, or otherwise ceases to

be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

"(B) RECAPTURE PERCENTAGE.—For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

"If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service	100
(ii) One full year after the close of the period described in clause (i)	80
(iii) One full year after the close of the period described in clause (ii)	60
(iv) One full year after the close of the period described in clause (iii)	40
(v) One full year after the close of the period described in clause (iv)	20

"(2) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—

"(A) IN GENERAL.—If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

"(B) CERTAIN EXCESS CREDIT RECAPTURED.—Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

"(C) CERTAIN SALES AND LEASEBACKS.—Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (c)(4) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

"(D) COORDINATION WITH PARAGRAPH (1).—If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by

reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

"(E) SPECIAL RULES.—Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(a)(5)(A).

"(3) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

"(4) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—Paragraphs (1) and (2) shall not apply to—

"(A) a transfer by reason of death, or

"(B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

"(5) DEFINITIONS AND SPECIAL RULES.—

"(A) INVESTMENT CREDIT PROPERTY.—For purposes of this subsection, the term 'investment credit property' means any property eligible for a credit determined under this subpart.

"(B) TRANSFER BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

"(i) the foregoing provisions of this subsection shall not apply, and

"(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

"(C) SPECIAL RULE.—Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"(b) CERTAIN PROPERTY NOT ELIGIBLE.—No credit shall be determined under this subpart with respect to—

"(1) PROPERTY USED OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any property described in section 168(g)(4).

"(2) PROPERTY USED FOR LODGING.—No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

"(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.[84]

[84] So in original. Probably should be "facilities;".

"(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

"(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

"(D) any energy property.

"(3) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATION.—No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

"(4) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—No credit shall be determined under this subpart with respect to any property used—

"(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

"(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

"(B) EXCEPTION FOR SHORT-TERM LEASES.—This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

"(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC.—If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

"(D) SPECIAL RULES FOR PARTNERSHIPS, ETC.—For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

"(E) CROSS REFERENCE.—

"For special rules for the application of this paragraph and paragraph (3), see section 168(h)."

"(c) BASIS ADJUSTMENT TO INVESTMENT CREDIT PROPERTY.—

"(1) IN GENERAL.—For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(2) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

"(3) SPECIAL RULE.—In the case of any energy credit or reforestation credit—

"(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

"(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

"(4) RECAPTURE OF REDUCTIONS.—

"(A) IN GENERAL.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

"(B) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

"(5) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

"(A) a partner's interest in a partnership, and

"(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

"(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

"(1) Section 46(e) (relating to limitations with respect to certain persons).

"(2) Section 46(f) (relating to limitation in case of certain regulated companies).

"(3) Section 46(h) (relating to special rules for cooperatives).

"(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

"(5) Section 48(d) (relating to certain leased property).

"(6) Section 48(f) (relating to estates and trusts).

"(7) Section 48(r) (relating to certain 501(d) organizations)."

(b) CONFORMING AMENDMENTS.—

(1)(A) Subclause (III) of section 29(b)(3)(A)(i) is amended by striking "section 48(l)(11)(C)" and inserting "section 48(a)(4)(C)".

(B) Paragraph (4) of section 29(b) is amended by striking "section 47" each place it appears and inserting "section 49(b) or 50(a)".

(C) Paragraph (3) of section 29(c) is amended to read as follows:

"(3) BIOMASS.—The term 'biomass' means any organic material other than—

"(A) oil and natural gas (or any product thereof), and

"(B) coal (including lignite) or any product thereof."

(2)(A) Paragraph (1) of section 38(b) is amended by striking "section 46(a)" and inserting "section 46".

(B) Subsection (c) of section 38 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(C) Subparagraph (C) of section 38(c)(2) (as redesignated by subparagraph (B)) is amended—

(i) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "46(e)(1)", and

(ii) by inserting "(as so in effect)" after "46(e)(2)".

(D) Subsection (d) of section 38 is amended—

(i) by striking "sections 46(f), 47(a), 196(a), and any other provision" and inserting "any provision",

(ii) by amending paragraph (2) to read as follows:

"(2) COMPONENTS OF INVESTMENT CREDIT.—The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.", and

(iii) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B) the credit determined under section 46—

"(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

"(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46."

(3) Subsection (k) of section 42 is amended—

(A) in paragraph (1)—

(i) by striking "46(c)(8)" and inserting "49(a)(1)",

(ii) by striking "46(c)(9)" and inserting "49(a)(2)", and

(iii) by striking "47(d)(1)" and inserting "49(b)(1)", and

(B) by striking "46(c)(8)(D)(iv)(II)" in paragraphs (2)(A)(ii) and (2)(D) and inserting "49(a)(1)(D)(iv)(II)".

(4) Subsection (e) of section 52 is amended by striking "section 46" and inserting "section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(5) Paragraph (1) of section 55(c) is amended by striking "section 47" and inserting "section 49(b) or 50(a)".

(6) Subparagraph (B) of section 108(g)(1) is amended by striking "section 46(c)(8)(D)(iv)" and inserting "section 49(a)(1)(D)(iv)".

(7) Paragraph (4) of section 145(d) is amended—

(A) by striking "section 48(g)(1)(C)" each place it appears and inserting "section 47(c)(1)(C)", and

(B) by striking "section 48(g)(1)(C)(i)" and inserting "section 47(c)(1)(C)(i)".

(8) Subparagraph (B) of section 147(d)(3) is amended by striking "section 48(g)(2)(B)" and inserting "section 47(c)(2)(B)".

(9)(A) Clause (vi) of section 168(e)(3)(B) is amended—

(i) by striking "paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(l)" in subclause (I) and inserting "subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)", and

(ii) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "48(l)" in subclause (II).

(B)(i) Subparagraph (D)(i) of section 168(e)(3) is amended by striking "section 48(p)" and inserting "subsection (i)(13)".

(ii) Subsection (i) of section 168 is amended by adding at the end thereof the following new paragraph:

"(13) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE.—

"(A) IN GENERAL.—The term 'single purpose agricultural or horticultural structure' means—

"(i) a single purpose livestock structure, and

"(ii) a single purpose horticultural structure.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) SINGLE PURPOSE LIVESTOCK STRUCTURE.—The term 'single purpose livestock structure' means any enclosure or structure specifically designed, constructed, and used—

"(I) for housing, raising, and feeding a particular type of livestock and their produce, and

"(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

"(ii) SINGLE PURPOSE HORTICULTURAL STRUCTURE.—The term 'single purpose horticultural structure' means—

"(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

"(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

"(iii) STRUCTURES WHICH INCLUDE WORK SPACE.—An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

"(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

"(II) the maintenance of the enclosure or structure, and

"(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

"(iv) LIVESTOCK.—The term 'livestock' includes poultry."

(C) Paragraph (4) of section 168(g) is amended to read as follows:

"(4) EXCEPTION FOR CERTAIN PROPERTY USED OUTSIDE UNITED STATES.—Subparagraph (A) of paragraph (1) shall not apply to—

"(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

"(B) rolling stock which is used within and without the United States and which is—

"(i) of a domestic railroad corporation providing transportation subject to subchapter I of chapter 105 of title 49, or

"(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

"(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

"(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

"(E) any container of a United States person which is used in the transportation of property to and from the United States;

"(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

"(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

"(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

"(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

"(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, develop-

ing, removing, or transporting resources from ocean waters or deposits under such waters;

"(K) any property described in section 48(a)(3)(A)(iii) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

"(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term 'northern portion of the Western Hemisphere' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America."

(10) Subparagraph (B) of section 170(h)(4) is amended by striking "section 48(g)(3)(B)" and inserting "section 47(c)(3)(B)".

(11)(A) Paragraph (1) of section 179(d) is amended by striking "section 38 property" and inserting "section 1245 property (as defined in section 1245(a)(3))".

(B) Paragraph (5) of section 179(d) is amended to read as follows:

"(5) SECTION NOT TO APPLY TO CERTAIN NONCORPORATE LESSORS.—This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

"(A) the property subject to the lease has been manufactured or produced by the lessor, or

"(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property."

(12)(A) Paragraph (1) of section 196(c) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "section 48(q)" and inserting "section 50(c)".

(B) Paragraph (1) of section 196(d) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "other than a credit to which section 48(q)(3) applies" and inserting "other than the rehabilitation credit".

(13)(A) Subsection (a) of section 280F is amended—

(i) by striking paragraphs (1) and (4) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and

(ii) by striking "the credit determined under section 46(a) or" in paragraph (2)(B) (as redesignated by clause (i)).

(B) Subsection (b) of section 280F is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(C) The paragraph heading for paragraph (1) of section 280F(c) is amended by striking "credits and".

(D) Subparagraph (A) of section 280F(d)(3) is amended by striking "the amount of any credit allowable under section 38 to the employee or".

(E) The section heading of section 280F is amended by striking "INVESTMENT TAX CREDIT AND".

(F) The table of sections for part IX of subchapter B of chapter 1 is amended by striking "investment credit and" in the item relating to section 280F.

(14) Paragraph (5) of section 312(k) is amended by striking "section 48(q)" and inserting "section 50(c)".

(15) Subparagraph (D) of section 465(b)(6) is amended by striking "46(c)(8)(D)(iv)" each place it appears and inserting "49(a)(1)(D)(iv)".

(16)(A) Paragraphs (3)(B) and (6)(B)(ii) of section 469(i) are each amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(B) Paragraph (1) of section 469(k) is amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(17) Subparagraph (A) of section 861(e)(1) is amended by striking "which is section 38 property (or would be section 38 property but for section 48(a)(5)" and inserting "which is section 1245 property (as defined in section 1245(a)(3))".

(18) Subparagraph (B) of section 865(c)(3) is amended by striking "section 48(a)(2)(B)" and inserting "section 168(g)(4)".

(19) Paragraph (21) of section 1016(a) is amended by striking "section 48(q) and inserting "section 50(c)".

(20) Subparagraph (A) of section 1033(g)(3) is amended by striking "with respect to which the investment credit determined under section 46(a) is or has been claimed or".

(21) Subparagraph (D) of section 1245(a)(3) is amended by striking "section 48(p)" and inserting "section 168(i)(13)".

(22) Subsection (b) of section 1274A is amended by inserting ", as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990" after "section 48(b)".

(23) Subsection (d) of section 1371 is amended—

(A) by striking "section 47(b)" in paragraph (1) and inserting "section 50(a)(4)", and

(B) by striking "section 47" in paragraphs (2) and (3) and inserting "section 49(b) or 50(a)".

(24) Section 1388 is amended by striking subsection (k).

(25) Subparagraph (B) of section 1503(e)(3) is amended by striking "section 48(q)" and inserting "section 50(c)".

(26) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart E and inserting the following:

"Subpart E. Rules for computing investment credit."

(c) EFFECTIVE DATE.— 26 USC 29 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1990.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act),

(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

(C) any property described in section 46(b)(2)(C) of such Code (as so in effect).

SEC. 11814. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 243(b).

(a) IN GENERAL.—Subsection (b) of section 243 is amended to read as follows:

"(b) QUALIFYING DIVIDENDS.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualifying dividend' means any dividend received by a corporation—

"(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

"(B) if—

"(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

"(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

"(2) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

"(3) SPECIAL RULE FOR GROUPS WHICH INCLUDE LIFE INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

"(B) EFFECT OF ELECTION.—If an election under this paragraph is in effect with respect to any affiliated group—

"(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

"(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

"(C) ELECTION.—An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Clause (i) of section 1504(c)(2)(B) is amended—

(1) by striking "section 243(b)(6)" and inserting "section 243(b)(3)", and

(2) by striking "section 243(b)(5)" and inserting "243(b)(2)".

(c) EFFECTIVE DATE.— 26 USC 243 note.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act).

SEC. 11815. ELIMINATION OF EXPIRED PROVISIONS IN PERCENTAGE DEPLETION.

(a) SECTION 613A.—

(1) GENERAL RULE.—Subsection (c) of section 613A is amended—

(A) by striking "the applicable percentage (determined in accordance with the table contained in paragraph (5))" in paragraph (1) and inserting "15 percent",

(B) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B) TENTATIVE QUANTITY.—For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.", and

(C) by striking paragraphs (5), and (7)(E).

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (A) and (B) of section 613A(c)(7) are each amended by striking "specified in paragraph (5)" and inserting "specified in paragraph (1)".

(B) Paragraphs (8)(B), (8)(C), and (9) are each amended by striking "determined under the table contained in paragraph (3)(B)" each place it appears and inserting "determined under paragraph (3)(B)".

(b) SECTION 613(e).—

(1) Subsection (e) of section 613 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Subparagraph (B) of section 613(e)(1) is amended to read as follows:

"(B) 15 percent shall be deemed to be the percentage specified in subsection (b),".

(3) Sections 57(a)(2)(D)(ii), 263(c), and 465(c)(1)(E) are each amended by striking "section 613 (e)(3)" and inserting "section 613(e)(2)".

SEC. 11816. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 29.

(a) GENERAL RULE.—Paragraph (1) of section 29(c) is amended by inserting "and" at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraphs (D) and (E).

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 29 is amended by striking paragraphs (4) and (5).

(2) Paragraph (4) of section 29(d) is amended to read as follows:

"(4) GAS FROM GEOPRESSURED BRINE, DEVONIAN SHALE, COAL SEAMS, OR A TIGHT FORMATION.—The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980."

(3) Subsection (d) of section 29 is amended by striking paragraph (5) and redesignating the following paragraphs accordingly.

(4) Paragraph (5) of section 29(d) (as redesignated by paragraph (3)) is amended by striking "subparagraph (C), (D), or (E)" and inserting "subparagraph (C)".

(5) Subsection (f) of section 29 is amended to read as follows:

"(f) APPLICATION OF SECTION.—This section shall apply with respect to qualified fuels—

"(1) which are—

"(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

"(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

"(2) which are sold before January 1, 2003."

Subpart C—Effective Date

26 USC 29 note.

SEC. 11821. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this part, the amendments made by this part shall take effect on the date of the enactment of this Act.

(b) SAVINGS PROVISION.—If—

(1) any provision amended or repealed by this part applied to—

(A) any transaction occurring before the date of the enactment of this Act,

(B) any property acquired before such date of enactment, or

(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment,

nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

PART II—PROVISIONS RELATING TO STUDIES

SEC. 11831. EXTENSION OF DATE FOR FILING REPORTS ON CERTAIN STUDIES.

(a) GENERAL RULE.—The date for the submission of the report on any study listed in subsection (b) is hereby extended to the due date for such study determined under subsection (b).

(b) LIST OF STUDIES AND DUE DATES.—

In the case of the study required under:	The due date is:	
Section 1211(d) of the Tax Reform Act of 1986 (relating to source rule on sales of personal property)	January 1, 1992	26 USC 865 note.
Section 407 of the Compact of Free Association Act of 1985 (relating to tax provisions on Micronesia Compact of Free Association)	January 1, 1991	48 USC 1681 note.
Section 634 of the Tax Reform Act of 1986 (relating to reform of subchapter C)	January 1, 1992	26 USC 301 note.
Section 9301(c)(3) of the Omnibus Budget Reconciliation Act of 1987 (relating to full funding limitation)	April 15, 1991	
Section 6056 of the Technical and Miscellaneous Revenue Act of 1988 (relating to minimum participation rules)	February 15, 1991	
Section 6072 of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain technical personnel)	February 15, 1991	
Section 6305(e) of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain family services providers)	January 1, 1992	26 USC 3121 note.
Section 6064(d)(4) of the Technical and Miscellaneous Revenue Act of 1988 (relating to deferred compensation plans of State and local governments and tax-exempt organizations)	January 1, 1992	26 USC 457 note.
Section 6067(b) of the Technical and Miscellaneous Revenue Act of 1988 (relating to spin-off of defined benefit plan assets to bridge banks)	January 1, 1992	26 USC 414 note.
Section 7612(f) of the Revenue Reconciliation Act of 1989 (relating to depreciation treatment of certain vehicles)	April 15, 1991	
Section 1012(c)(2) of the Tax Reform Act of 1986 (relating to fraternal beneficiary associations)	July 1, 1992	26 USC 833 note.
Section 1025 of the Tax Reform Act of 1986 (relating to property and casualty insurance companies)	January 1, 1992	26 USC 832 note.

SEC. 11832. REPEAL OF CERTAIN STUDIES.

The following provisions are hereby repealed:

(1) Section 5041(f) of the Technical and Miscellaneous Revenue Act of 1988 (relating to long-term contracts). 26 USC 382 note.

(2) Section 560 of the Deficit Reduction Act of 1984 (relating to employee welfare benefit plans). 26 USC 382 note.

(3) Section 621(d) of the Tax Reform Act of 1986 (relating to depreciation, built-in deductions, and informal bankruptcy workouts). 26 USC 382 note.

(4) Section 702 of the Tax Reform Act of 1986 (relating to book earnings and profits adjustments). 26 USC 56 note.

(5) Section 675(d) of the Tax Reform Act of 1986, as amended by section 1006(w) of the Technical and Miscellaneous Revenue 26 USC 860A note.

Act of 1988 (relating to impact of REMIC provisions on thrift industry).

SEC. 11833. MODIFICATIONS TO STUDY OF AMERICANS WORKING ABROAD.

26 USC 911 note.

(a) DUE DATE FOR REPORTS.—Subsection (a) of section 208 of the Foreign Earned Income Act of 1978 (as amended by section 114 of the Economic Recovery Tax Act of 1981) is amended by striking so much of such subsection as precedes "the Secretary of the Treasury" and inserting the following:

"(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter,".

(b) INFORMATION FROM FEDERAL AGENCIES.—Subsection (b) of such section 208 (as so amended) is amended by striking "shall furnish" and inserting "shall keep such records and furnish".

SEC. 11834. INCREASE IN THRESHOLD FOR JOINT COMMITTEE REPORTS ON REFUNDS AND CREDITS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6405 are each amended by striking "$200,000" and inserting "$1,000,000".

26 USC 6405 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, except that such amendment shall not apply with respect to any refund or credit with respect to a report has been made before such date of enactment under section 6405 of the Internal Revenue Code of 1986.

Subtitle I—Public Debt Limit

SEC. 11901. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$4,145,000,000,000".

31 USC 3101 note.

(b) RESTORATION OF TRUST FUNDS FOR 1990.—

(1) IN GENERAL.—

(A) OBLIGATIONS ISSUED.—Except as provided in paragraph (2), within 30 days after the expiration of any debt issuance suspension period to which this subsection applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(i) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(ii) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(B) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this subsection applies, the Secretary of the Treasury

shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to subparagraph (A), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(2) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this subsection applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(3) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to debt issuance suspension periods beginning on or after October 15, 1990, and ending before January 1, 1991.

(4) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this subsection shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(5) DEFINITIONS.—For purposes of this subsection—

(A) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(B) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

TITLE XII—PENSIONS

Subtitle A—Treatment of Reversions of Qualified Plan Assets to Employers

SEC. 12001. INCREASE IN REVERSION TAX.

26 USC 4980.

Section 4980(a) (relating to tax on reversion of qualified plan assets to employer) is amended by striking "15 percent" and inserting "20 percent".

SEC. 12002. ADDITIONAL TAX IF NO REPLACEMENT PLAN.

(a) IN GENERAL.—Section 4980 is amended by adding at the end thereof the following new subsection:

"(d) INCREASE IN TAX FOR FAILURE TO ESTABLISH REPLACEMENT PLAN OR INCREASE BENEFITS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '50 percent' for '20 percent' with respect to any employer reversion from a qualified plan unless—

"(A) the employer establishes or maintains a qualified replacement plan, or

"(B) the plan provides benefit increases meeting the requirements of paragraph (3).

"(2) QUALIFIED REPLACEMENT PLAN.—For purposes of this subsection, the term 'qualified replacement plan' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the 'replacement plan') with respect to which the following requirements are met:

"(A) PARTICIPATION REQUIREMENT.—At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

"(B) ASSET TRANSFER REQUIREMENT.—

"(i) 25 PERCENT CUSHION.—A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

"(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

"(II) the amount determined under clause (ii).

"(ii) REDUCTION FOR INCREASE IN BENEFITS.—The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

"(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

"(II) takes effect immediately on the termination date.

"(iii) TREATMENT OF AMOUNT TRANSFERRED.—In the case of the transfer of any amount under clause (i)—

"(I) such amount shall not be includible in the gross income of the employer,

"(II) no deduction shall be allowable with respect to such transfer, and

"(III) such transfer shall not be treated as an employer reversion for purposes of this section.

"(C) ALLOCATION REQUIREMENTS.—

"(i) IN GENERAL.—In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

"(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

"(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

"(ii) COORDINATION WITH SECTION 415 LIMITATION.—If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

"(I) such amount shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

"(iii) TREATMENT OF INCOME.—Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

"(iv) UNALLOCATED AMOUNTS AT TERMINATION.—If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

"(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

"(3) PRO RATA BENEFIT INCREASES.—

"(A) IN GENERAL.—The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

"(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer

could receive as an employer reversion without regard to this subsection, and

"(ii) take effect immediately on the termination date.

"(B) PRO RATA INCREASE.—For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

"(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

"(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting 'equal to' for 'not less than'.

"(4) COORDINATION WITH OTHER PROVISIONS.—

"(A) LIMITATIONS.—A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

"(B) TREATMENT AS EMPLOYER CONTRIBUTIONS.—Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

"(C) 10-YEAR PARTICIPATION REQUIREMENT.—Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED PARTICIPANT.—The term 'qualified participant' means an individual who—

"(i) is an active participant,

"(ii) is a participant or beneficiary in pay status as of the termination date,

"(iii) is a participant not described in clause (i) or (ii)—

"(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

"(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

"(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an

accrued benefit under the terminated plan as of the termination date.

"(B) PRESENT VALUE.—Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

"(C) REALLOCATION OF INCREASE.—Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

"(D) PLANS TAKEN INTO ACCOUNT.—For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

"(i) 2 or more plans may be treated as 1 plan, or

"(ii) a plan of a successor employer may be taken into account.

"(E) SPECIAL RULE FOR PARTICIPATION REQUIREMENT.—For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414 (b), (c), (m), or (o) shall be treated as 1 employer.

"(6) SUBSECTION NOT TO APPLY TO EMPLOYER IN BANKRUPTCY.—This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law."

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT.—

(1) FIDUCIARY RESPONSIBILITY.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end thereof the following new subsection:

"(d)(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of the Internal Revenue Code of 1986, a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

"(A) In the case of a fiduciary of the terminated plan, any requirement—

"(i) under section 4980(d)(2)(B) of such Code with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

"(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code with respect to any increase in benefits under the terminated plan.

"(B) In the case of a fiduciary of a qualified replacement plan, any requirement—

"(i) under section 4980(d)(2)(A) of such Code with respect to participation in the qualified replacement plan of active participants in the terminated plan,

"(ii) under section 4980(d)(2)(B) of such Code with respect to the receipt of assets from the terminated plan, and

"(iii) under section 4980(d)(2)(C) of such Code with respect to the allocation of assets to participants of the qualified replacement plan.

"(2) For purposes of this subsection—

"(A) any term used in this subsection which is also used in section 4980(d) of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section, and

"(B) any reference in this subsection to the Internal Revenue Code of 1986 shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990."

(2) CONFORMING AMENDMENTS.—

(A) Section 404(a)(1)(D) of such Act (29 U.S.C. 1104(a)(1)(D)) is amended by striking "or title IV" and inserting "and title IV".

(B) Section 4044(d) of such Act (29 U.S.C. 1344(d)) is amended by adding at the end thereof the following new paragraph:

"(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of the Internal Revenue Code of 1986 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 404(d) of this Act with respect to any distribution of residual assets of a single-employer plan to the employer."

(C) Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end thereof the following new paragraph:

"(41) The term 'single-employer plan' means a plan which is not a multiemployer plan."

26 USC 4980 note.

SEC. 12003. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall apply to reversions occurring after September 30, 1990.

(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

(2) in the case of plans subject to title I (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act was provided to participants in connection with the termination before October 1, 1990,

(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.

Subtitle B—Transfers to Retiree Health Accounts

SEC. 12011. TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, and stock bonus plans) is amended by adding at the end thereof the following new subpart:

"Subpart E—Treatment of Transfers to Retiree Health Accounts

"Sec. 420. Transfers of excess pension assets to retiree health accounts.

"SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS. 26 USC 420.

"(a) GENERAL RULE.—If there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account which is part of such plan—

"(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

"(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

"(3) such transfer shall not be treated—

"(A) as an employer reversion for purposes of section 4980, or

"(B) as a prohibited transaction for purposes of section 4975, and

"(4) the limitations of subsection (d) shall apply to such employer.

"(b) QUALIFIED TRANSFER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer—

"(A) of excess pension assets of a defined benefit plan to a health benefits account which is part of such plan in a taxable year beginning after December 31, 1990,

"(B) which does not contravene any other provision of law, and

"(C) with respect to which the following requirements are met in connection with the plan—

"(i) the use requirements of subsection (c)(1),

"(ii) the vesting requirements of subsection (c)(2), and

"(iii) the minimum cost requirements of subsection (c)(3).

"(2) ONLY 1 TRANSFER PER YEAR.—

"(A) IN GENERAL.—No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

"(B) EXCEPTION.—A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).

"(3) LIMITATION ON AMOUNT TRANSFERRED.—The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

"(4) SPECIAL RULE FOR 1990.—

"(A) IN GENERAL.—Subject to the provisions of subsection (c), a transfer shall be treated as a qualified transfer if such transfer—

"(i) is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of—

"(I) the due date (including extensions) for the filing of the return of tax for such preceding taxable year, or

"(II) the date such return is filed, and

"(ii) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

"(B) DEDUCTION REDUCED.—The amount of the deductions otherwise allowable under this chapter to an employer for the taxable year preceding the employer's first taxable year beginning after December 31, 1990, shall be reduced by the amount of any qualified transfer to which this paragraph applies.

"(C) COORDINATION WITH REDUCTION RULE.—Subsection (e)(1)(B) shall not apply to a transfer described in subparagraph (A).

"(5) EXPIRATION.—No transfer in any taxable year beginning after December 31, 1995, shall be treated as a qualified transfer.

"(c) REQUIREMENTS OF PLANS TRANSFERRING ASSETS.—

"(1) USE OF TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement).

"(B) AMOUNTS NOT USED TO PAY FOR HEALTH BENEFITS.—

"(i) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

"(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

"(I) shall not be includible in the gross income of the employer for such taxable year, but

"(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

"(C) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be

treated as paid first out of the assets and income described in subparagraph (A).

"(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

"(B) SPECIAL RULE FOR 1990.—In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.

"(3) MINIMUM COST REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer.

"(B) APPLICABLE EMPLOYER COST.—For purposes of this paragraph, the term 'applicable employer cost' means, with respect to any taxable year, the amount determined by dividing—

"(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

"(I) without regard to any reduction under subsection (e)(1)(B), and

"(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

"(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

"(C) ELECTION TO COMPUTE COST SEPARATELY.—An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

"(D) COST MAINTENANCE PERIOD.—For purposes of this paragraph, the term 'cost maintenance period' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

"(d) LIMITATIONS ON EMPLOYER.—For purposes of this title—

"(1) DEDUCTION LIMITATIONS.—No deduction shall be allowed—

"(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

"(B) for qualified current retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

"(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

"(i) the amount determined under subparagraph (A) (and income allocable thereto), over

"(ii) the amount determined under subparagraph (B).

"(2) NO CONTRIBUTIONS ALLOWED.—An employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1).

"(e) DEFINITION AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED CURRENT RETIREE HEALTH LIABILITIES.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified current retiree health liabilities' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits provided during such taxable year if—

"(i) such benefits were provided directly by the employer, and

"(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

"(B) REDUCTIONS FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.

"(C) APPLICABLE HEALTH BENEFITS.—The term 'applicable health benefits' mean health benefits or coverage which are provided to—

"(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and

"(ii) their spouses and dependents.

"(D) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing

qualified current retiree health liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

"(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

"(A) the amount determined under section 412(c)(7)(A)(ii), over

"(B) the greater of—

"(i) the amount determined under section 412(c)(7)(A)(i), or

"(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.

"(3) HEALTH BENEFITS ACCOUNT.—The term "health benefits account" means an account established and maintained under section 401(h).

"(4) COORDINATION WITH SECTION 412.—In the case of a qualified transfer to a health benefits account—

"(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(b) CONFORMING AMENDMENT.—Section 401(h) is amended by inserting ", and subject to the provisions of section 420" after "Secretary". 26 USC 401.

(c) EFFECTIVE DATES.— 26 USC 420 note.

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after December 31, 1990.

(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of section 420(b)(4)(B) of such Code (as added by subsection (a)).

SEC. 12012. APPLICATION OF ERISA TO TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) EXCLUSIVE BENEFIT REQUIREMENT.—Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(c)(1)) is amended by inserting ", or under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)" after "insured plans)".

(b) EXEMPTIONS FROM PROHIBITED TRANSACTIONS.—Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by adding at the end thereof the following new paragraph:

"(13) Any transfer in a taxable year beginning before January 1, 1996, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)."

(c) FUNDING LIMITATIONS.—Section 302 of such Act (29 U.S.C. 1082) is amended by redesignating subsection (g) as subsection (h) and by adding at the end thereof the following new subsection:

"(g) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—For purposes of this section, in the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986)—

"(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7), be treated as assets in the plan as of the valuation date for such year, and

"(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of such Code) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(d) NOTICE REQUIREMENTS.—

(1) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.—

"(1) NOTICE TO PARTICIPANTS.—Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

"(2) NOTICE TO SECRETARIES, ADMINISTRATOR, AND EMPLOYEE ORGANIZATIONS.—

"(A) IN GENERAL.—Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

"(B) INFORMATION RELATING TO TRANSFER.—Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and

immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

"(C) AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS.—The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

"(3) DEFINITIONS.—For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991) shall have the same meaning as when used in such section."

(2) PENALTIES.—

(A) Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by inserting "or section 101(e)(1)" after "section 606".

(B) Section 502(c)(3) of such Act (29 U.S.C. 1132(c)(3)) is amended—

(i) by inserting "or who fails to meet the requirements of section 101(e)(2) with respect to any person" after "beneficiary" the first place it appears, and

(ii) by inserting "or to such person" after "beneficiary" the second place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 made after the date of the enactment of this Act. 29 USC 1021 note.

Subtitle C—Premium Rates

SEC. 12021. INCREASE IN PREMIUM RATES.

(a) INCREASE IN BASIC PREMIUM.—

(1) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking "for plan years beginning after December 31, 1987, an amount equal to the sum of $16" and inserting "for plan years beginning after December 31, 1990, an amount equal to the sum of $19".

(2) CONFORMING AMENDMENT.—Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended by adding at the end the following new clause:

"(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and".

(b) INCREASE IN ADDITIONAL PREMIUM.—Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(1) by striking "$6.00" in clause (ii) and inserting "$9.00", and

(2) by striking "$34" in clause (iv)(I) and inserting "$53".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1990. 29 USC 1306 note.

TITLE XIII—BUDGET ENFORCEMENT

Budget Enforcement Act of 1990.

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Budget Enforcement Act of 1990". 2 USC 900 note.

(b) TABLE OF CONTENTS.—

TITLE XIII—BUDGET ENFORCEMENT

Subtitle A—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

PART I—AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 13101. SEQUESTRATION.

(a) SECTIONS 250 THROUGH 254.—Sections 251 (except for subsection (a)(6)(I)) through 254 of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) are amended to read as follows:

"SEC. 250. TABLE OF CONTENTS; STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION; DEFINITIONS. 2 USC 900.

"(a) TABLE OF CONTENTS.—

"(b) GENERAL STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION.—This part provides for the enforcement of the deficit reduction assumed in House Concurrent Resolution 310 (101st Congress, second session) and the applicable deficit targets for fiscal years 1991 through 1995. Enforcement, as necessary, is to be implemented through sequestration—

"(1) to enforce discretionary spending levels assumed in that resolution (with adjustments as provided hereinafter);

"(2) to enforce the requirement that any legislation increasing direct spending or decreasing revenues be on a pay-as-you-go basis; and

"(3) to enforce the deficit targets specifically set forth in the Congressional Budget and Impoundment Control Act of 1974 (with adjustments as provided hereinafter);

applied in the order set forth above.

"(c) DEFINITIONS.—

"As used in this part:

"(1) The terms 'budget authority', 'new budget authority', 'outlays', and 'deficit' have the meanings given to such terms in section 3 of the Congressional Budget and Impoundment Control Act of 1974 (but including the treatment specified in section 257(b)(3) of the Hospital Insurance Trust Fund) and the terms 'maximum deficit amount' and 'discretionary spending limit' shall mean the amounts specified in section 601 of that Act as adjusted under sections 251 and 253 of this Act.

"(2) The terms 'sequester' and 'sequestration' refer to or mean the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.

"(3) The term 'breach' means, for any fiscal year, the amount (if any) by which new budget authority or outlays for that year (within a category of discretionary appropriations) is above that category's discretionary spending limit for new budget authority or outlays for that year, as the case may be.

"(4) The term 'category' means:

"(A) For fiscal years 1991, 1992, and 1993, any of the following subsets of discretionary appropriations: defense, international, or domestic. Discretionary appropriations in each of the three categories shall be those so designated in the joint statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990. New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

"(B) For fiscal years 1994 and 1995, all discretionary appropriations.

Contributions to the United States to offset the cost of Operation Desert Shield shall not be counted within any category.

"(5) The term 'baseline' means the projection (described in section 257) of current-year levels of new budget authority, outlays, receipts, and the surplus or deficit into the budget year and the outyears.

"(6) The term 'budgetary resources' means—

"(A) with respect to budget year 1991, new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; direct spending authority; and obligation limitations; or

"(B) with respect to budget year 1992, 1993, 1994, or 1995, new budget authority; unobligated balances; direct spending authority; and obligation limitations.

"(7) The term 'discretionary appropriations' means budgetary resources (except to fund direct-spending programs) provided in appropriation Acts.

"(8) The term 'direct spending' means—

"(A) budget authority provided by law other than appropriation Acts;

"(B) entitlement authority; and

"(C) the food stamp program.

"(9) The term 'current' means, with respect to OMB estimates included with a budget submission under section 1105(a) of title 31, United States Code, the estimates consistent with the economic and technical assumptions underlying that budget and with respect to estimates made after submission of the fiscal year 1992 budget that are not included with a budget submission, estimates consistent with the economic and technical assumptions underlying the most recently submitted President's budget.

"(10) The term 'real economic growth', with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

"(11) The term 'account' means an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President's budget.

"(12) The term 'budget year' means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

"(13) The term 'current year' means, with respect to a budget year, the fiscal year that immediately precedes that budget year.

"(14) The term 'outyear' means, with respect to a budget year, any of the fiscal years that follow the budget year through fiscal year 1995.

"(15) The term 'OMB' means the Director of the Office of Management and Budget.

"(16) The term 'CBO' means the Director of the Congressional Budget Office.

"(17) For purposes of sections 252 and 253, legislation enacted during the second session of the One Hundred First Congress shall be deemed to have been enacted before the enactment of this Act.

"(18) As used in this part, all references to entitlement authority shall include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990.

"(19) The term 'deposit insurance' refers to the expenses of the Federal Deposit Insurance Corporation and the funds it incorporates, the Resolution Trust Corporation, the National Credit Union Administration and the funds it incorporates, the Office of Thrift Supervision, the Comptroller of the Currency Assessment Fund, and the RTC Office of Inspector General.

"(20) The term 'composite outlay rate' means the percent of new budget authority that is converted to outlays in the fiscal year for which the budget authority is provided and subsequent fiscal years, as follows:

"(A) For the international category, 46 percent for the first year, 20 percent for the second year, 16 percent for the third year, and 8 percent for the fourth year.

"(B) For the domestic category, 53 percent for the first year, 31 percent for the second year, 12 percent for the third year, and 2 percent for the fourth year.

"SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS. 2 USC 901.

"(a) FISCAL YEARS 1991-1995 ENFORCEMENT.—

"(1) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session and on the same day as a sequestration (if any) under section 252 and section 253, there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

"(2) ELIMINATING A BREACH.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the baseline level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category; except that the health programs set forth in section 256(e) shall not be reduced by more than 2 percent and the uniform percent applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to eliminate that breach. If, within a category, the discretionary spending limits for both new budget authority and outlays are breached, the uniform percentage shall be calculated by—

"(A) first, calculating the uniform percentage necessary to eliminate the breach in new budget authority, and

"(B) second, if any breach in outlays remains, increasing the uniform percentage to a level sufficient to eliminate that breach.

"(3) MILITARY PERSONNEL.—If the President uses the authority to exempt any military personnel from sequestration under section 255(h), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(h) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary re-

sources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

"(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

"(5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

"(6) WITHIN-SESSION SEQUESTRATION.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

"(7) OMB ESTIMATES.—As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation. Within 5 calendar days after the enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation, and an explanation of any difference between the two estimates. For purposes of this paragraph, amounts provided by annual appropriations shall include any new budget authority and outlays for those years in accounts for which funding is provided in that legislation that result from previously enacted legislation. Those OMB estimates shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph for the purposes of this subsection. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—(1) When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, or 1995 (except

as otherwise indicated), OMB shall calculate (in the order set forth below), and the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1995 to reflect the following:

"(A) CHANGES IN CONCEPTS AND DEFINITIONS.—The adjustments produced by the amendments made by title XIII of the Omnibus Budget Reconciliation Act of 1990 or by any other changes in concepts and definitions shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions minus those levels using the concepts and definitions in effect before such changes. Such other changes in concepts and definitions may only be made in consultation with the Committees on Appropriations, the Budget, Government Operations, and Governmental Affairs of the House of Representatives and Senate.

"(B) CHANGES IN INFLATION.—(i) For a budget submitted for budget year 1992, 1993, 1994, or 1995, the adjustments produced by changes in inflation shall equal the levels of discretionary new budget authority and outlays in the baseline (calculated using current estimates) subtracted from those levels in that baseline recalculated with the baseline inflators for the budget year only, multiplied by the inflation adjustment factor computed under clause (ii).

"(ii) For a budget year the inflation adjustment factor shall equal the ratio between the level of year-over-year inflation measured for the fiscal year most recently completed and the applicable estimated level for that year set forth below:

"For 1990, 1.041
"For 1991, 1.052
"For 1992, 1.041
"For 1993, 1.033

Inflation shall be measured by the average of the estimated gross national product implicit price deflator index for a fiscal year divided by the average index for the prior fiscal year.

"(C) CREDIT REESTIMATES.—For a budget submitted for fiscal year 1993 or 1994, the adjustments produced by reestimates to costs of Federal credit programs shall be, for any such program, a current estimate of new budget authority and outlays associated with a baseline projection of the prior year's gross loan level for that program minus the baseline projection of the prior year's new budget authority and associated outlays for that program.

"(2) When OMB submits a sequestration report under section 254(g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the sequestration report, and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include, adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year through 1995, as follows:

"(A) IRS FUNDING.—To the extent that appropriations are enacted that provide additional new budget authority or result in additional outlays (as compared with the CBO baseline constructed in June 1990) for the Internal Revenue Service compliance initiative in any fiscal year, the adjustments for that year shall be those amounts, but shall not exceed the amounts set forth below—

"(i) for fiscal year 1991, $191,000,000 in new budget authority and $183,000,000 in outlays;

"(ii) for fiscal year 1992, $172,000,000 in new budget authority and $169,000,000 in outlays;

"(iii) for fiscal year 1993, $183,000,000 in new budget authority and $179,000,000 in outlays;

"(iv) for fiscal year 1994, $187,000,000 in new budget authority and $183,000,000 in outlays; and

"(v) for fiscal year 1995, $188,000,000 in new budget authority and $184,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority.

"(B) DEBT FORGIVENESS.—If, in calendar year 1990 or 1991, an appropriation is enacted that forgives the Arab Republic of Egypt's foreign military sales indebtedness to the United States and any part of the Government of Poland's indebtedness to the United States, the adjustment shall be the estimated costs (in new budget authority and outlays, in all years) of that forgiveness.

"(C) IMF FUNDING.—If, in fiscal year 1991, 1992, 1993, 1994, or 1995 an appropriation is enacted to provide to the International Monetary Fund the dollar equivalent, in terms of Special Drawing Rights, of the increase in the United States quota as part of the International Monetary Fund Ninth General Review of Quotas, the adjustment shall be the amount provided by that appropriation.

"(D) EMERGENCY APPROPRIATIONS.—(i) If, for fiscal year 1991, 1992, 1993, 1994, or 1995, appropriations for discretionary accounts are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and the outlays flowing in all years from such appropriations.

"(ii) The costs for operation Desert Shield are to be treated as emergency funding requirements not subject to the defense spending limits. Funding for Desert Shield will be provided through the normal legislative process. Desert Shield costs should be accommodated through Allied burden-sharing, subsequent appropriation Acts, and if the President so chooses, through offsets within other defense accounts. Emergency Desert Shield costs mean those incremental costs associated with the increase in operations in the Middle East and do not include costs that would be experienced by the Department of Defense as part of its normal operations absent Operation Desert Shield.

"(E) SPECIAL ALLOWANCE FOR DISCRETIONARY NEW BUDGET AUTHORITY.—(i) For each of fiscal years 1992 and 1993, the adjustment for the domestic category in each year shall be an amount equal to 0.1 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the domestic category);

"(ii) for each of fiscal years 1992 and 1993, the adjustment for the international category in each year shall be an amount equal to 0.079 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for

fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the international category); and

"(iii) if, for fiscal years 1992 and 1993, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority for any category due to technical estimates made by the Director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for 1992 and 1993 together) equal to 0.042 percent of the sum of the adjusted discretionary limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively).

"(F) SPECIAL OUTLAY ALLOWANCE.—If in any fiscal year outlays for a category exceed the discretionary spending limit for that category but new budget authority does not exceed its limit for that category (after application of the first step of a sequestration described in subsection (a)(2), if necessary), the adjustment in outlays is the amount of the excess, but not to exceed $2,500,000,000 in the defense category, $1,500,000,000 in the international category, or $2,500,000,000 in the domestic category (as applicable) in fiscal year 1991, 1992, or 1993, and not to exceed $6,500,000,000 in fiscal year 1994 or 1995 less any of the outlay adjustments made under subparagraph (E) for a category for a fiscal year.

"SEC. 252. ENFORCING PAY-AS-YOU-GO. 2 USC 902.

"(a) FISCAL YEARS 1992-1995 ENFORCEMENT.—The purpose of this section is to assure that any legislation (enacted after the date of enactment of this section) affecting direct spending or receipts that increases the deficit in any fiscal year covered by this Act will trigger an offsetting sequestration.

"(b) SEQUESTRATION; LOOK-BACK.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 253, there shall be a sequestration to offset the amount of any net deficit increase in that fiscal year and the prior fiscal year caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any prior sequestration as provided by paragraph (2)). OMB shall calculate the amount of deficit increase, if any, in those fiscal years by adding—

"(1) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) applicable to those fiscal years, other than any amounts included in such estimates resulting from—

"(A) full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of this section, and

"(B) emergency provisions as designated under subsection (e); and

"(2) the estimated amount of savings in direct spending programs applicable to those fiscal years resulting from the prior year's sequestration under this section or section 253, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year), as published in OMB's end-of-session sequestration report for that prior year.

"(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) FIRST.—All reductions in automatic spending increases specified in section 256(a) shall be made.

"(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.

"(C) THIRD.—(i) If additional reductions in direct spending accounts are required to be made, each remaining non-exempt direct spending account shall be reduced by the uniform percentage necessary to make the reductions in direct spending required by paragraph (1); except that the medicare programs specified in section 256(d) shall not be reduced by more than 4 percent and the uniform percentage applicable to all other direct spending programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the required reduction in direct spending.

"(ii) For purposes of determining reductions under clause (i), outlay reductions (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(2) For purposes of this subsection, accounts shall be assumed to be at the level in the baseline.

"(d) OMB ESTIMATES.—As soon as practicable after Congress completes action on any direct spending or receipts legislation enacted after the date of enactment of this section, after consultation with the Committees on the Budget of the House of Representatives and the Senate, CBO shall provide OMB with an estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation. Within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section, OMB shall transmit a report to the House of Representatives and to the Senate containing such CBO estimate of that legislation, an OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation, and an explanation of any difference between the two estimates. Those CMB estimates shall be made using current economic and technical assumptions. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(e) EMERGENCY LEGISLATION.—If, for fiscal year 1991, 1992, 1993, 1994, or 1995, a provision of direct spending or receipts legislation is enacted that the President designates as an emergency requirement and that the Congress so designates in statute, the amounts of new budget authority, outlays, and receipts in all fiscal years through 1995 resulting from that provision shall be designated as an emergency requirement in the reports required under subsection (d).

"SEC. 253. ENFORCING DEFICIT TARGETS. 2 USC 903.

"(a) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits) or section 252 (enforcing pay-as-you-go), there shall be a sequestration to eliminate the excess deficit (if any remains) if it exceeds the margin.

"(b) EXCESS DEFICIT; MARGIN.—The excess deficit is, if greater than zero, the estimated deficit for the budget year, minus—

"(1) the maximum deficit amount for that year;

"(2) the amounts for that year designated as emergency direct spending or receipts legislation under section 252(e); and

"(3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the deposit insurance reestimate for that year, if any, calculated under subsection (h).

The 'margin' for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is $15,000,000,000.

"(c) DIVIDING THE SEQUESTRATION.—To eliminate the excess deficit in a budget year, half of the required outlay reductions shall be obtained from non-exempt defense accounts (accounts designated as function 050 in the President's fiscal year 1991 budget submission) and half from non-exempt, non-defense accounts (all other non-exempt accounts).

"(d) DEFENSE.—Each non-exempt defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (c), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

"(e) NON-DEFENSE.—Actions to reduce non-defense accounts shall be taken in the following order:

"(1) FIRST.—All reductions in automatic spending increases under section 256(a) shall be made.

"(2) SECOND.—If additional reductions in non-defense accounts are required to be made, the maximum reduction permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

"(3) THIRD.—(A) If additional reductions in non-defense accounts are required to be made, each remaining non-exempt, non-defense account shall be reduced by the uniform percentage necessary to make the reductions in non-defense outlays required by subsection (c), except that—

"(i) the medicare program specified in section 256(d) shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under section 252 or, if it has been reduced by 2 percent or more under section 252, it may not be further reduced under this section; and

"(ii) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent in total (including any reduction made under section 251),

and the uniform percent applicable to all other programs under this subsection shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense outlays.

"(B) For purposes of determining reductions under subparagraph (A), outlay reduction (as a result of sequestration of

Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(f) BASELINE ASSUMPTIONS; PART-YEAR APPROPRIATIONS.—

"(1) BUDGET ASSUMPTIONS.—For purposes of subsections (b), (c), (d), and (e), accounts shall be assumed to be at the level in the baseline minus any reductions required to be made under sections 251 and 252.

"(2) PART-YEAR APPROPRIATIONS.—If, on the date specified in subsection (a), there is in effect an Act making or continuing appropriations for part of a fiscal year for any non-exempt budget account, then the dollar sequestration calculated for that account under subsection (d) or (e), as applicable, shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation; except that the amount to be sequestered from that account shall be reduced (but not below zero) by the savings achieved by that appropriation when the enacted amount is less than the baseline for that account.

"(g) ADJUSTMENTS TO MAXIMUM DEFICIT AMOUNTS.—

"(1) ADJUSTMENTS.—

"(A) When the President submits the budget for fiscal year 1992, the maximum deficit amounts for fiscal years 1992, 1993, 1994, and 1995 shall be adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions. When the President submits the budget for fiscal year 1993, the maximum deficit amounts for fiscal years 1993, 1994, and 1995 shall be further adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions.

"(B) When submitting the budget for fiscal year 1994, the President may choose to adjust the maximum deficit amounts for fiscal years 1994 and 1995 to reflect up-to-date reestimates of economic and technical assumptions. If the President chooses to adjust the maximum deficit amount when submitting the fiscal year 1994 budget, the President may choose to invoke the same adjustment procedure when submitting the budget for fiscal year 1995. In each case, the President must choose between making no adjustment or the full adjustment described in paragraph (2). If the President chooses to make that full adjustment, then those procedures for adjusting discretionary spending limits described in sections 251(b)(1)(C) and 251(b)(2)(E), otherwise applicable through fiscal year 1993 or 1994 (as the case may be), shall be deemed to apply for fiscal year 1994 (and 1995 if applicable).

"(C) When the budget for fiscal year 1994 or 1995 is submitted and the sequestration reports for those years under section 254 are made (as applicable), if the President does not choose to make the adjustments set forth in

subparagraph (B), the maximum deficit amount for that fiscal year shall be adjusted by the amount of the adjustment to discretionary spending limits first applicable for that year (if any) under section 251(b).

"(D) For each fiscal year the adjustments required to be made with the submission of the President's budget for that year shall also be made when OMB submits the sequestration update report and the final sequestration report for that year, but OMB shall continue to use the economic and technical assumptions in the President's budget for that year.

Each adjustment shall be made by increasing or decreasing the maximum deficit amounts set forth in section 601 of the Congressional Budget Act of 1974.

"(2) CALCULATIONS OF ADJUSTMENTS.—The required increase or decrease shall be calculated as follows:

"(A) The baseline deficit or surplus shall be calculated using up-to-date economic and technical assumptions, using up-to-date concepts and definitions, and, in lieu of the baseline levels of discretionary appropriations, using the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251.

"(B) The net deficit increase or decrease caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any sequestration of direct spending accounts) shall be calculated for each fiscal year by adding—

"(i) the estimates of direct spending and receipts legislation transmitted under section 252(d) applicable to each such fiscal year; and

"(ii) the estimated amount of savings in direct spending programs applicable to each such fiscal year resulting from the prior year's sequestration under this section or section 252 of direct spending, if any, as contained in OMB's final sequestration report for that year.

"(C) The amount calculated under subparagraph (B) shall be subtracted from the amount calculated under subparagraph (A).

"(D) The maximum deficit amount set forth in section 601 of the Congressional Budget Act of 1974 shall be subtracted from the amount calculated under subparagraph (C).

"(E) The amount calculated under subparagraph (D) shall be the amount of the adjustment required by paragraph (1).

"(h) TREATMENT OF DEPOSIT INSURANCE.—

"(1) INITIAL ESTIMATES.—The initial estimates of the net costs of federal deposit insurance for fiscal year 1994 and fiscal year 1995 (assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of the submission of the budget for fiscal year 1993) shall be set forth in that budget.

"(2) REESTIMATES.—For fiscal year 1994 and fiscal year 1995, the amount of the reestimate of deposit insurance costs shall be calculated by subtracting the amount set forth under paragraph (1) for that year from the current estimate of deposit insurance costs (but assuming full funding of, and continuation of, the

deposit insurance guarantee commitment in effect on the date of submission of the budget for fiscal year 1993).

2 USC 904.

"SEC. 254. REPORTS AND ORDERS.

"(a) TIMETABLE.—The timetable with respect to this part for any budget year is as follows:

"Date:	Action to be completed:
January 21	Notification regarding optional adjustment of maximum deficit amount.
5 days before the President's budget submission.	CBO sequestration preview report.
The President's budget submission	OMB sequestration preview report.
August 10	Notification regarding military personnel.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report; Presidential order.
30 days later	GAO compliance report.

"(b) SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the Federal Register.

"(c) OPTIONAL ADJUSTMENT OF MAXIMUM DEFICIT AMOUNTS.—With respect to budget year 1994 or 1995, on the date specified in subsection (a) the President shall notify the House of Representatives and the Senate of his decision regarding the optional adjustment of the maximum deficit amount (as allowed under section 253(g)(1)(B)).

"(d) SEQUESTRATION PREVIEW REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a preview report regarding discretionary, pay-as-you-go, and deficit sequestration based on laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORT.—The preview reports shall set forth estimates for the current year and each subsequent year through 1995 of the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(3) PAY-AS-YOU-GO SEQUESTRATION REPORTS.—The preview reports shall set forth, for the current year and the budget year, estimates for each of the following:

"(A) The amount of net deficit increase or decrease, if any, calculated under subsection 252(b).

"(B) A list identifying each law enacted and sequestration implemented after the date of enactment of this section included in the calculation of the amount of deficit increase or decrease and specifying the budgetary effect of each such law.

"(C) The sequestration percentage or (if the required sequestration percentage is greater than the maximum allowable percentage for medicare) percentages necessary to eliminate a deficit increase under section 252(c).

"(4) DEFICIT SEQUESTRATION REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The maximum deficit amount, the estimated deficit calculated under section 253(b), the excess deficit, and the margin.

"(B) The amount of reductions required under section 252, the excess deficit remaining after those reductions have been made, and the amount of reductions required from defense accounts and the reductions required from non-defense accounts.

"(C) The sequestration percentage necessary to achieve the required reduction in defense accounts under section 253(d).

"(D) The reductions required under sections 253(e)(1) and 253(e)(2).

"(E) The sequestration percentage necessary to achieve the required reduction in non-defense accounts under section 253(e)(3).

The CBO report need not set forth the items other than the maximum deficit amount for fiscal year 1992, 1993, or any fiscal year for which the President notifies the House of Representatives and the Senate that he will adjust the maximum deficit amount under the option under section 253(g)(1)(B).

"(5) EXPLANATION OF DIFFERENCES.—The OMB reports shall explain the differences between OMB and CBO estimates for each item set forth in this subsection.

"(e) NOTIFICATION REGARDING MILITARY PERSONNEL.—On or before the date specified in subsection (a), the President shall notify the Congress of the manner in which he intends to exercise flexibility with respect to military personnel accounts under section 255(h).

"(f) SEQUESTRATION UPDATE REPORTS.—On the dates specified in subsection (a), OMB and CBO shall issue a sequestration update report, reflecting laws enacted through those dates, containing all of the information required in the sequestration preview reports.

"(g) FINAL SEQUESTRATION REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a final sequestration report, updated to reflect laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORTS.—The final reports shall set forth estimates for each of the following:

"(A) For the current year and each subsequent year through 1995 the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(B) For the current year and the budget year the estimated new budget authority and outlays for each category and the breach, if any, in each category.

"(C) For each category for which a sequestration is required, the sequestration percentages necessary to achieve the required reduction.

"(D) For the budget year, for each account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions.

"(3) PAY-AS-YOU-GO AND DEFICIT SEQUESTRATION REPORTS.—The final reports shall contain all the information required in the pay-as-you-go and deficit sequestration preview reports. In addition, these reports shall contain, for the budget year, for each

account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions. The reports shall also contain estimates of the effects on outlays of the sequestration in each outyear through 1995 for direct spending programs.

"(4) EXPLANATION OF DIFFERENCES.—The OMB report shall explain any differences between OMB and CBO estimates of the amount of any net deficit change calculated under subsection 252(b), any excess deficit, any breach, and any required sequestration percentage. The OMB report shall also explain differences in the amount of sequesterable resources for any budget account to be reduced if such difference is greater than $5,000,000.

"(5) PRESIDENTIAL ORDER.—On the date specified in subsection (a), if in its final sequestration report OMB estimates that any sequestration is required, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(h) WITHIN-SESSION SEQUESTRATION REPORTS AND ORDER.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach, 10 days later CBO shall issue a report containing the information required in paragraph (g)(2). Fifteen days after enactment, OMB shall issue a report containing the information required in paragraphs (g)(2) and (g)(4). On the same day as the OMB report, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(i) GAO COMPLIANCE REPORT.—On the date specified in subsection (a), the Comptroller General shall submit to the Congress and the President a report on—

"(1) the extent to which each order issued by the President under this section complies with all of the requirements contained in this part, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not; and

"(2) the extent to which each report issued by OMB or CBO under this section complies with all of the requirements contained in this part, either certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not.

"(j) LOW-GROWTH REPORT.—At any time, CBO shall notify the Congress if—

"(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, CBO or OMB has determined that real economic growth is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

"(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.

"(k) ECONOMIC AND TECHNICAL ASSUMPTIONS.—In all reports required by this section, OMB shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code.".

(b) SECTION 250: DEFINITIONS.—Paragraph (12) of section 257 of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as a new paragraph (21) of section 250(c). 2 USC 900, 907.

(c) SECTION 255: EXEMPT PROGRAMS AND ACTIVITIES.—

(1) Section 255(a) of such Act is amended to read as follows: 2 USC 905.

"(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.".

(2) Section 255(e) of such Act is amended to read as follows:

"(e) NON-DEFENSE UNOBLIGATED BALANCES.—Unobligated balances of budget authority carried over from prior fiscal years, except balances in the defense category, shall be exempt from reduction under any order issued under this part.".

(3) Section 255(g)(1)(B) of such Act is amended by inserting after the item relating to Railroad retirement tier II the following:

"Railroad supplemental annuity pension fund (60-8012-0-7-602);".

(4) Section 255 of such Act is amended by inserting at the end the following:

"(h) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—

"(1) The President may, with respect to any military personnel account, exempt that account from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

"(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.".

(d) SECTION 256: EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.—

(1) Section 256(a) of such Act is amended to read as follows: 2 USC 906.

"(a) AUTOMATIC SPENDING INCREASES.—Automatic spending increases are increases in outlays due to changes in indexes in the following programs:

"(1) National Wool Act;

"(2) Special milk program; and

"(3) Vocational rehabilitation basic State grants.

In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.".

(2) Section 256 of such Act is amended by redesignating subsection (b) as subsection (h), subsection (c) as subsection (b), subsection (e) as subsection (f), subsection (f) as subsection (c), subsection (h) as subsection (i), and subsection (k) as subsection (e), by repealing subsections (i) and (l), and by inserting at the end the following:

"(k) SPECIAL RULES FOR THE JOBS PORTION OF AFDC.—

"(1) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any order issued by the President under section 254 shall accomplish the

full amount of any required sequestration of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

"(2) NEW ALLOTMENT FORMULA.—

"(A) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act for the fiscal year to which the sequestration applies shall be equal to—

"(i) the lesser of—

"(I) that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year; or

"(II) the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(B) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act for the fiscal year to which the sequestration applies that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(l) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

"(1) Budgetary resources sequestered from any account other than a trust or special fund account shall be permanently cancelled.

"(2) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

"(3) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

"(4) Except as otherwise provided, obligations in sequestered accounts shall be reduced only in the fiscal year in which a sequester occurs.

"(5) If an automatic spending increase is sequestered, the increase (in the applicable index) that was disregarded as a result of that sequestration shall not be taken into account in any subsequent fiscal year.

"(6) Except as otherwise provided, sequestration in trust and special fund accounts for which obligations are indefinite shall be taken in a manner to ensure that obligations in the fiscal year of a sequestration are reduced, from the level that would actually have occurred, by the applicable sequestration percentage.".

(3) Section 256 of such Act is amended by striking "section 252" each place it appears and by inserting "section 254". 2 USC 906.

(4) Section 256(c) (as redesignated) of such Act is amended by inserting after the first sentence the following: "No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage.".

(5) Section 256(d)(1) of such Act is amended to read as follows:

"(1) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.".

(6) Section 256(d)(2)(C) of such Act is repealed.

(e) THE BASELINE.—(1) Section 257 of such Act is amended to read as follows: 2 USC 907.

"SEC. 257. THE BASELINE.

"(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

"(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

"(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

"(2) EXCEPTIONS.—(A) No program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears.

"(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans'

pensions unless otherwise provided by law enacted in that session.

"(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

"(3) HOSPITAL INSURANCE TRUST FUND.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

"(c) DISCRETIONARY APPROPRIATIONS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

"(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

"(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

"(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

"(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

"(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross national product fixed-weight price index for that fiscal year differs from the average of such estimated index for the current year.

"(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing

appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.

"(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.".

(2) Section 251(a)(6)(I) of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as section 257(e) of such Act. Section 257(e) is amended by striking "assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the" and inserting "The". 2 USC 901, 907.

(f) Such Act is amended by inserting after section 257 the following:

"SEC. 258. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH. 2 USC 907a.

"(a) PROCEDURES IN THE EVENT OF A LOW GROWTH REPORT.—

"(1) TRIGGER.—Whenever CBO issues a low-growth report under section 254(j), the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in section 254(j) are met and suspending the relevant provisions of this title, titles III and VI of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.

"(2) FORM OF JOINT RESOLUTION.—

"(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: 'That the Congress declares that the conditions specified in section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are modified as described in section 258(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(B) The title of the joint resolution shall be 'Joint resolution suspending certain provisions of law pursuant to section 258(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985.'; and the joint resolution shall not contain any preamble.

"(3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate, as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

"(4) CONSIDERATION OF JOINT RESOLUTION.—

"(A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

"(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

"(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

"(B)(i) In the Senate, a joint resolution under this paragraph shall be privileged. It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

"(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

"(C) No amendment to a joint resolution considered under this paragraph shall be in order in the Senate.

"(b) SUSPENSION OF SEQUESTRATION PROCEDURES.—Upon the enactment of a declaration of war or a joint resolution described in subsection (a)—

"(1) the subsequent issuance of any sequestration report or any sequestration order is precluded;

"(2) sections 302(f), 310(d), 311(a), and title VI of the Congressional Budget Act of 1974 are suspended; and

"(3) section 1103 of title 31, United States Code, is suspended.

"(c) RESTORATION OF SEQUESTRATION PROCEDURES.—

"(1) In the event of a suspension of sequestration procedures due to a declaration of war, then, effective with the first fiscal

year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

"(2) In the event of a suspension of sequestration procedures due to the enactment of a joint resolution described in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.

"SEC. 258A. MODIFICATION OF PRESIDENTIAL ORDER. 2 USC 907b.

"(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after the Director of OMB issues a final sequestration report under section 254 for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 254 or provide an alternative to reduce the deficit for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

"(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

"(1) REFERRAL TO COMMITTEE.—A joint resolution introduced in the Senate under subsection (a) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

"(2) CONSIDERATION IN THE SENATE.—On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(3) DEBATE IN THE SENATE.—

"(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to

reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order, and a motion to recommit the joint resolution is not in order.

"(C)(i) No amendment that is not germane to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

"(5) APPEALS.—Appeals from the decisions of the Chair shall be decided without debate.

"(6) CONFERENCE REPORTS.—In the Senate, points of order under titles III, IV, and VI of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

"(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

"(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

"(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

"(8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.".

(g) Such Act is amended by inserting after section 258A the following:

"SEC. 258B. FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES. 2 USC 907c.

"(a) Subject to subsections (b), (c), and (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 254.

"(b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

"(c) The President may not exercise the authority provided by this paragraph for a fiscal year unless—

"(1) the President submits a single report to Congress specifying, for each account, the detailed changes proposed to be made for such fiscal year pursuant to this section;

"(2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

"(3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

"(d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

"(e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: 'That the

report of the President as submitted on [Insert Date] under section 258B is hereby approved.'.

"(2) The title of the joint resolution shall be 'Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(3) Such joint resolution shall not contain any preamble.

"(f)(1) A joint resolution introduced in the Senate under subsection (d) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane or relevant to the provisions of the joint resolution or to the order issued under section 254. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense).

"(2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(g)(1) In the Senate, debate on a joint resolution introduced under subsection (d), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

"(h)(1) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or

the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains mathematical consistency. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subsection (d) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

"(4) For purposes of the application of paragraph (3), the level of outlays and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(i) Immediately following the conclusion of the debate on a joint resolution introduced under subsection (d), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under subsection (h), the vote on final passage of the joint resolution shall occur.

"(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (d) shall be decided without debate.

"(k) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(l) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:

"(1) The joint resolution of the House of Representatives shall not be referred to a committee.

"(2) With respect to a joint resolution introduced under subsection (d) in the Senate—

"(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

"(m) If the Senate receives from the House of Representatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

2 USC 907d.

"SEC. 258C. SPECIAL RECONCILIATION PROCESS.

"(a) REPORTING OF RESOLUTIONS AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE.—

"(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.—After the submission of an OMB sequestration update report under section 254 that envisions a sequestration under section 252 or 253, each standing committee of the Senate may, not later than October 10, submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

"(2) INITIAL BUDGET COMMITTEE ACTION.—After the submission of such a report, the Committee on the Budget of the Senate may, not later than October 15, report to the Senate a resolution. The resolution may affirm the impact of the order envisioned by such report, in whole or in part. To the extent that any part is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit reduction contained in those sections which are not affirmed.

"(3) RESPONSE OF COMMITTEES.—Committees instructed pursuant to paragraph (2), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in paragraph (2) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

"(4) BUDGET COMMITTEE ACTION.—Upon receipt of the recommendations received in response to a resolution referred to in paragraph (2), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in paragraph (2) fails to submit any rec-

ommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

"(5) POINT OF ORDER.—It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under paragraph (4) with respect to a fiscal year, any amendment thereto, or any conference report thereon if—

"(A) the enactment of such bill or resolution as reported;

"(B) the adoption and enactment of such amendment; or

"(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, unless the low-growth report submitted under section 254 projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

"(6) TREATMENT OF CERTAIN AMENDMENTS.—In the Senate, an amendment which adds to a resolution reported under paragraph (2) an instruction of the type referred to in such paragraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane on the basis that the instruction constitutes new matter.

"(7) DEFINITION.—For purposes of paragraphs (1), (2), and (3), the term "day" shall mean any calendar day on which the Senate is in session.

"(b) PROCEDURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

"(2) LIMIT ON DEBATE.—Debate in the Senate on any resolution reported pursuant to subsection (a)(2), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

"(3) LIMITATION ON AMENDMENTS.—Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

"(4) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE.—Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

"(5) DEFINITION.—For purposes of this subsection, the term 'resolution' means a simple, joint, or concurrent resolution.".

PART II—RELATED AMENDMENTS

SEC. 13111. TEMPORARY AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

Title VI of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE VI—BUDGET AGREEMENT ENFORCEMENT PROVISIONS

2 USC 665.

"SEC. 601. DEFINITIONS AND POINT OF ORDER.

"(a) DEFINITIONS.—As used in this title and for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985:

"(1) MAXIMUM DEFICIT AMOUNT.—The term 'maximum deficit amount' means—

"(A) with respect to fiscal year 1991, $327,000,000,000;
"(B) with respect to fiscal year 1992, $317,000,000,000;
"(C) with respect to fiscal year 1993, $236,000,000,000;
"(D) with respect to fiscal year 1994, $102,000,000,000; and
"(E) with respect to fiscal year 1995, $83,000,000,000;

as adjusted in strict conformance with sections 251, 252, and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) DISCRETIONARY SPENDING LIMIT.—The term 'discretionary spending limit' means—

"(A) with respect to fiscal year 1991—
"(i) for the defense category: $288,918,000,000 in new budget authority and $297,660,000,000 in outlays;
"(ii) for the international category: $20,100,000,000 in new budget authority and $18,600,000,000 in outlays; and
"(iii) for the domestic category: $182,700,000,000 in new budget authority and $198,100,000,000 in outlays;
"(B) with respect to fiscal year 1992—
"(i) for the defense category: $291,643,000,000 in new budget authority and $295,744,000,000 in outlays;
"(ii) for the international category: $20,500,000,000 in new budget authority and $19,100,000,000 in outlays; and
"(iii) for the domestic category: $191,300,000,000 in new budget authority and $210,100,000,000 in outlays;
"(C) with respect to fiscal year 1993—
"(i) for the defense category: $291,785,000,000 in new budget authority and $292,686,000,000 in outlays;
"(ii) for the international category: $21,400,000,000 in new budget authority and $19,600,000,000 in outlays; and
"(iii) for the domestic category: $198,300,000,000 in new budget authority and $221,700,000,000 in outlays;
"(D) with respect to fiscal year 1994, for the discretionary category: $510,800,000,000 in new budget authority and $534,800,000,000 in outlays; and
"(E) with respect to fiscal year 1995, for the discretionary category: $517,700,000,000 in new budget authority and $540,800,000,000 in outlays;

as adjusted in strict conformance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE, INTERNATIONAL, AND DOMESTIC DISCRETIONARY SPENDING.—

"(1) Except as provided in paragraph (3), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995 (or amendment, motion, or conference report on such a resolution), or any appropriations bill or resolution (or amendment, motion, or conference report on such an appropriations bill or resolution) for fiscal year 1992 or 1993 that would exceed the allocations in this section or the suballocations made under section 602(b) based on these allocations.

"(3) For purposes of this subsection, the levels of new budget authority and outlays for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(4) This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

"SEC. 602. COMMITTEE ALLOCATIONS AND ENFORCEMENT. 2 USC 665a.

" (a) COMMITTEE SPENDING ALLOCATIONS.—

"(1) HOUSE OF REPRESENTATIVES.—

"(A) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include allocations, consistent with the resolution recommended in the conference report, of the appropriate levels (for each fiscal year covered by that resolution and a total for all such years) of—

"(i) total new budget authority,

"(ii) total entitlement authority, and

"(iii) total outlays;

among each committee of the House of Representatives that has jurisdiction over legislation providing or creating such amounts.

"(B) NO DOUBLE COUNTING.—Any item allocated to one committee of the House of Representatives may not be allocated to another such committee.

"(C) FURTHER DIVISION OF AMOUNTS.—The amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations for each fiscal year shall be further divided between discretionary and mandatory amounts or programs, as appropriate.

"(2) SENATE ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include an allocation, consistent with the resolution recommended in the conference report, of the appropriate levels of—

"(A) total new budget authority;

"(B) total outlays; and

"(C) social security outlays;

among each committee of the Senate that has jurisdiction over legislation providing or creating such amounts.

"(3) AMOUNTS NOT ALLOCATED.—(A) In the House of Representatives, if a committee receives no allocation of new budget authority, entitlement authority, or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, entitlement authority, or outlays.

"(B) In the Senate, if a committee receives no allocation of new budget authority, outlays, or social security outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, outlays, or social security outlays.

"(b) SUBALLOCATIONS BY COMMITTEES.—

"(1) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a budget resolution is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a)(1)(A) or (a)(2) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this paragraph.

"(2) SUBALLOCATIONS BY OTHER COMMITTEES OF THE SENATE.—Each other committee of the Senate to which an allocation under subsection (a)(2) is made in the joint explanatory statement may subdivide each amount allocated to it under subsection (a) among its subcommittees or among programs over which it has jurisdiction and shall promptly report any such suballocations to the Senate. Section 302(c) shall not apply in the Senate to committees other than the Committee on Appropriations.

"(c) APPLICATION OF SECTION 302(f) TO THIS SECTION.—In fiscal years through 1995, reference in section 302(f) to the appropriate allocation made pursuant to section 302(b) for a fiscal year shall, for purposes of this section, be deemed to be a reference to any allocation made under subsection (a) or any suballocation made under subsection (b), as applicable, for the fiscal year of the resolution or for the total of all fiscal years made by the joint explanatory statement accompanying the applicable concurrent resolution on the budget. In the House of Representatives, the preceding sentence shall not apply with respect to fiscal year 1991.

"(d) APPLICATION OF SUBSECTIONS (a) AND (b) TO FISCAL YEARS 1992 TO 1995.—In the case of concurrent resolutions on the budget for fiscal years 1992 through 1995, allocations shall be made under subsection (a) instead of section 302(a) and shall be made under subsection (b) instead of section 302(b). For those fiscal years, all references in sections 302(c), (d), (e), (f), and (g) to section 302(a) shall be deemed to be to subsection (a) (including revisions made under section 604) and all such references to section 302(b) shall be deemed to be to subsection (b) (including revisions made under section 604).".

"(e) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE.—Section 302(f)(1) and, after April 15 of any calendar year section 303(a), shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

"(1) the enactment of such bill or resolution as reported;

"(2) the adoption and enactment of such amendment; or

"(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not increase the deficit for any such fiscal year, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay-as-you-go procedures under section 301(b)(8) if included in that concurrent resolution.

"(2) REVISED ALLOCATIONS.—

"(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under section 302(f)(1) but for the exception provided in paragraph (1), the chairman of the Committee on the Budget of the House of Representatives may file with the House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

"(B) such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

"SEC. 603. CONSIDERATION OF LEGISLATION BEFORE ADOPTION OF BUDGET RESOLUTION FOR THAT FISCAL YEAR. 2 USC 665b.

"(a) ADJUSTING SECTION ALLOCATION OF DISCRETIONARY SPENDING.—If a concurrent resolution on the budget is not adopted by April 15, the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, a section 602(a) allocation to the Committee on Appropriations consistent with the discretionary spending limits contained in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code. Such allocation shall include the full allowance specified under section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) As soon as practicable after a section 602(a) allocation is submitted under this section, the Committee on Appropriations shall make suballocations and promptly report those suballocations to the House of Representatives.

"SEC. 604. RECONCILIATION DIRECTIVES REGARDING PAY-AS-YOU-GO REQUIREMENTS. 2 USC 665c.

"(a) INSTRUCTIONS TO EFFECTUATE PAY-AS-YOU-GO IN THE HOUSE OF REPRESENTATIVES.—If legislation providing for a net reduction in revenues in any fiscal year (that, within the same measure, is not fully offset in that fiscal year by reductions in direct spending) is enacted, the Committee on the Budget of the House of Representatives may report, within 15 legislative days during a Congress, a pay-as-you-go reconciliation directive in the form of a concurrent resolution—

"(1) specifying the total amount by which revenues sufficient to eliminate the net deficit increase resulting from that legislation in each fiscal year are to be changed; and

"(2) directing that the committees having jurisdiction determine and recommend changes in the revenue law, bills, and resolutions to accomplish a change of such total amount.

"(b) CONSIDERATION OF PAY-AS-YOU-GO RECONCILIATION LEGISLATION IN THE HOUSE OF REPRESENTATIVES.—In the House of Representatives, subsections (b) through (d) of section 310 shall apply in the same manner as if the reconciliation directive described in subsection (a) were a concurrent resolution on the budget.

2 USC 665d.

"SEC. 605. APPLICATION OF SECTION 311; POINT OF ORDER.

"(a) APPLICATION OF SECTION 311(a).—(1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority or total budget outlays or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate level for that year and the 4 succeeding years.

"(2) In the Senate, in the application of section 311(a)(2) to any bill, resolution, motion, or conference report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

"(b) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for the first fiscal year covered by that resolution that exceeds the maximum deficit amount specified for such fiscal year in section 601(a).

2 USC 665e.

"SEC. 606. 5-YEAR BUDGET RESOLUTIONS; BUDGET RESOLUTIONS MUST CONFORM TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

"(a) 5-YEAR BUDGET RESOLUTIONS.—In the case of any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995, that resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of the calendar year in which it is reported and for each of the 4 succeeding fiscal years for the matters described in section 301(a).

"(b) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider any concurrent resolution on the budget for a fiscal year or conference report thereon under section 301 or 304 that exceeds the maximum deficit amount for each fiscal year covered by the concurrent resolution or conference report as determined under section 601(a), including possible revisions under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year under section 301, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for the first fiscal year that is set forth in such concurrent resolution or con-

ference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 601(a), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal years as determined under section 601(a).

"(d) ADJUSTMENTS.—(1) Notwithstanding any other provision of law, concurrent resolutions on the budget for fiscal years 1992, 1993, 1994, and 1995 under section 301 or 304 may set forth levels consistent with allocations increased by—

"(A) amounts not to exceed the budget authority amounts in section 251(b)(2)(E)(i) and (ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 and the composite outlays per category consistent with them; and

"(B) the budget authority and outlay amounts in section 251(b)(1) of that Act.

"(2) For purposes of congressional consideration of provisions described in sections 251(b)(2)(A), 251(b)(2)(B), 251(b)(2)(C), 251(b)(2)(D), and 252(e), determinations under sections 302, 303, and 311 shall not take into account any new budget authority, new entitlement authority, outlays, receipts, or deficit effects in any fiscal year of those provisions.

"SEC. 607. EFFECTIVE DATE. 2 USC 665 note.

This title shall take effect upon its date of enactment and shall apply to fiscal years 1991 to 1995.".

SEC. 13112. CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.—

(1) TABLE OF CONTENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended to reflect the new section numbers and headings resulting from amendments made by this title.

(2) SECTION 3.—Section 3 of such Act is amended— 2 USC 622.

(A) by striking paragraphs (6), (7), and (8) and inserting the following:

"(6) The term 'deficit' means, with respect to a fiscal year, the amount by which outlays exceeds receipts during that year.

"(7) The term 'surplus' means, with respect to a fiscal year, the amount by which receipts exceeds outlays during that year.

"(8) The term 'government-sponsored enterprise' means a corporate entity created by a law of the United States that—

"(A)(i) has a Federal charter authorized by law;

"(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

"(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

"(iv) is a financial institution with power to—

"(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

"(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

"(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

"(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

"(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.".

(3) SECTION 202.—Section 202(a)(1) and the second sentence of 202(f)(1) of such Act are amended by striking "budget authority" and inserting "new budget authority".

2 USC 602.

(4) SECTION 300.—Section 300 of such Act is amended by striking "First Monday after January 3" and by inserting "First Monday in February".

2 USC 631.

(5) SECTION 301(d).—Section 301(d) of such Act is amended by striking "On or before February 25 of each year" and inserting "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code".

2 USC 632.

(6) SECTION 302(a).—Section 302(a)(2) of such Act is amended by striking "the House of Representatives and".

2 USC 633.

(7) SECTION 302(f).—Section 302(f)(2) of such Act is amended—

(A) by inserting after "in excess of" the following: "(A)";

(B) by striking "under subsection (b)" and inserting "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b)"; and

(C) by inserting at the end the following:

"Subparagraph (A) shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.".

(8) SECTION 304.—Section 304 of such Act is amended by striking subsection (b) and by striking "(c)" and inserting "(b)".

2 USC 635.

(9) SECTION 310(g).—Section 310(g) of such Act is amended by striking "resolution pursuant" and inserting "joint resolution pursuant" and by striking "254(b)" and inserting "258C".

2 USC 641.

(10) SECTION 311(a).—Section 311(a) of such Act is amended by striking "or, in the Senate" and all that follows thereafter through "paragraph (2) of such subsection" and inserting "except in the case that a declaration of war by the Congress is in effect".

2 USC 642.

(11) SECTION 904(a).—Section 904(a) of such Act is amended by striking "and" after "III", by inserting ", V, and VI (except section 601(a))" after "IV", and by striking "606,".

2 USC 621 note.

(b) CONFORMING AMENDMENT TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Subsection (b) of section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

2 USC 900 note.

"(b) EXPIRATION.—Part C of this title, section 271(b) of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 1995.".

(c) CONFORMING AMENDMENTS TO SECTION 1105 OF TITLE 31, UNITED STATES CODE.—

(1) SECTION 1105(a).—Section 1105(a) of title 31, United States Code, is amended by striking "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" and by inserting "On or after the first Monday in

January but not later than the first Monday in February of each year"

(2) SECTION 1105(f).—Section 1105(f) of title 31, United States Code, is amended to read as follows:

"(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.".

(d) CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES.—

(1) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of the Rules of the House of Representatives is amended by striking "(a)(4)".

(2) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of Rules of the House of Representatives is amended by striking "Act, and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985" and inserting "Act".

(3) JURISDICTION.—Clause 1(j) of rule X of the Rules of the House of Representatives is amended by inserting after paragraph (6) the following new paragraph:

"(7) Measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(4) ALLOCATIONS.—Clause 4(h) of rule X of the Rules of the House of Representatives is amended by inserting "or section 602 (in the case of fiscal years 1991 through 1995)" after "section 302".

(5) MULTIYEAR REVENUE ESTIMATES.—Clause 7(a)(1) of rule XIII of the Rules of the House of Representatives is amended by striking ", except that, in the case of measures affecting the revenues, such reports shall require only an estimate of the gain or loss in revenues for a one-year period".

(e) CONFORMING AMENDMENT TO THE FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978.—Section 103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a) is amended by striking "transmit to the Congress during the first twenty days of each regular session" and inserting "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, United States Code".

(f) FILING REQUIREMENT.—After the convening of the One Hundred Second Congress, the chairman of the Committee on the Budget of the Senate shall file with the Senate revised and outyear budget aggregates and allocations under section 602(a) consistent with this Act.

Subtitle B—Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

SEC. 13201. CREDIT ACCOUNTING.

(a) CREDIT ACCOUNTING.—Title V of the Congressional Budget Act of 1974 is amended to read as follows:

Federal Credit Reform Act of 1990.

"TITLE V—CREDIT REFORM

2 USC 621 note.

"SEC. 500. SHORT TITLE.

"This title may be cited as the 'Federal Credit Reform Act of 1990'.

2 USC 661.

"SEC. 501. PURPOSES.

"The purposes of this title are to—

"(1) measure more accurately the costs of Federal credit programs;

"(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

"(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

"(4) improve the allocation of resources among credit programs and between credit and other spending programs.

2 USC 661a.

"SEC. 502. DEFINITIONS.

"For purposes of this title—

"(1) The term 'direct loan' means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

"(2) The term 'direct loan obligation' means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

"(3) The term 'loan guarantee' means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

"(4) The term 'loan guarantee commitment' means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

"(5)(A) The term 'cost' means the estimated long-term cost to the Government of a direct loan or loan guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

"(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows:

"(i) loan disbursements;

"(ii) repayments of principal; and

"(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties and other recoveries.

"(C) The cost of a loan guarantee shall be the net present value when a guaranteed loan is disbursed of the cash flow from—

"(i) estimated payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments, and

"(ii) the estimated payments to the Government including origination and other fees, penalties and recoveries.

"(D) Any Government action that alters the estimated net present value of an outstanding direct loan or loan guarantee (except modifications within the terms of existing contracts or through other existing authorities) shall be counted as a change in the cost of that direct loan or loan guarantee. The calculation of such changes shall be based on the estimated present value of the direct loan or loan guarantee at the time of modification.

"(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the direct loan or loan guarantee for which the estimate is being made.

"(6) The term 'credit program account' means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

"(7) The term 'financing account' means the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

"(8) The term 'liquidating account' means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991.

These accounts shall be shown in the budget on a cash basis.

"(9) The term 'Director' means the Director of the Office of Management and Budget.

"SEC. 503. OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW. 2 USC 661b.

"(a) IN GENERAL.—For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan or loan guarantee programs.

"(b) DELEGATION.—The Director may delegate to agencies authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

"(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

"(d) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan and loan guarantee programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

"(e) HISTORICAL CREDIT PROGRAM COSTS.—The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

"(f) ADMINISTRATIVE COSTS.—The Director and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs under credit reform accounting.

2 USC 661c.

"SEC. 504. BUDGETARY TREATMENT.

"(a) PRESIDENT'S BUDGET.—Beginning with fiscal year 1992, the President's budget shall reflect the costs of direct loan and loan guarantee programs. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request.

"(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 1992 and thereafter only to the extent that—

"(1) appropriations of budget authority to cover their costs are made in advance;

"(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program is enacted; or

"(3) authority is otherwise provided in appropriation Acts.

"(c) EXEMPTION FOR MANDATORY PROGRAMS.—Subsection (b) shall not apply to a direct loan or loan guarantee program that—

"(1) constitutes an entitlement (such as the guaranteed student loan program or the veterans' home loan guaranty program); or

"(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

"(d) BUDGET ACCOUNTING.—

"(1) The authority to incur new direct loan obligations, make new loan guarantee commitments, or directly or indirectly alter the costs of outstanding direct loans and loan guarantees shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account to pay to the financing account.

"(2) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (1) shall be paid from the credit program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

"(3) All collections and payments of the financing accounts shall be a means of financing.

"(e) MODIFICATIONS.—A direct loan obligation or loan guarantee commitment shall not be modified in a manner that increases its cost unless budget authority for the additional cost is appropriated, or is available out of existing appropriations or from other budgetary resources.

"(f) REESTIMATES.—When the estimated cost for a group of direct loans or loan guarantees for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

"(g) ADMINISTRATIVE EXPENSES.—All funding for an agency's administration of a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

"SEC. 505. AUTHORIZATIONS. 2 USC 661d.

"(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations or loan guarantee commitments, such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

"(b) AUTHORIZATION FOR FINANCING ACCOUNTS.—In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

"(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supercede or override the authority of the head of a Federal agency to administer and operate a direct loan or loan guarantee program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

"(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—If funds in liquidating accounts are insufficient to satisfy the obligations and commitments of said accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

"(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.—There are authorized to be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

"(f) REINSURANCE.—Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

"(g) ELIGIBILITY AND ASSISTANCE.—Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

2 USC 661e.

"SEC. 506. TREATMENT OF DEPOSIT INSURANCE AND AGENCIES AND OTHER INSURANCE PROGRAMS.

"(a) IN GENERAL.—

"(1) This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

"(2) The Director and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis on the same basis as loan guarantees, or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

"(3) For the purposes of paragraph (2), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

2 USC 661f.

"SEC. 507. EFFECT ON OTHER LAWS.

"(a) EFFECT ON OTHER LAWS.—This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee program.

"(b) CREDITING OF COLLECTIONS.—Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.".

(b) CONFORMING AMENDMENTS.—

2 USC 622.

(1) DEFINITION.—Section 3(2) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by title V".

2 USC 633.

(2) POINT OF ORDER FOR FISCAL YEAR 1991.—Effective January 1, 1991, for fiscal year 1991 only, section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting after "new budget authority" the following: "or new credit authority".

(3) SUNSET OF POINT OF ORDER IN FISCAL YEAR 1992.—Effective for fiscal years beginning after September 30, 1991, section 302 of the Congressional Budget Act is amended—

(A) in subsection (a)(1)—

(i) by striking "total entitlement authority, and total credit authority" and inserting "and total entitlement authority";

(ii) by striking "such entitlement authority, or such credit authority" and inserting "or such entitlement authority"; and

(iii) by striking "entitlement authority, and credit authority" and inserting "and entitlement authority";

(B) in subsection (a)(2), by striking "total budget outlays, total new budget authority and new credit authority" and inserting "total budget outlays and total new budget authority";

(C) in subsection (b)(1)(A), by striking "budget outlays, new budget authority, and new credit authority" and inserting "budget outlays and new budget authority";

(D) in subsection (c)—

(i) in paragraph (1), by inserting "or" at the end thereof; and

(ii) by striking "or (3) new credit authority for a fiscal year;"; and

(E) in subsection (f)(1)—

(i) by striking "year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year," and inserting "year or new entitlement authority effective during such fiscal year,"; and

(ii) by striking "authority, new entitlement authority, or new credit authority" and inserting "authority or new entitlement authority".

SEC. 13202. CODIFICATION OF PROVISION REGARDING REVENUE ESTIMATES.

(a) REDESIGNATION.—Section 201 of the Congressional Budget Act of 1974 is amended by redesignating subsection (f) as subsection (g). 2 USC 601.

(b) TRANSFER.—The text of section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 is transferred to section 201 of the Congressional Budget Act of 1974 and is designated as subsection (g). 2 USC 921, 601c.

(c) CONFORMING CHANGES.—Section 201(g) of the Congressional Budget Act of 1974 (as redesignated by subsection (b)) is amended by—

(1) striking "this title and the Congressional Budget and Impoundment Control Act of 1974" and inserting "this Act"; and

(2) inserting "REVENUE ESTIMATES.—" before the first sentence.

SEC. 13203. DEBT INCREASE AS MEASURE OF DEFICIT; DISPLAY OF FEDERAL RETIREMENT TRUST FUND BALANCES.

Section 301(b) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following new paragraphs: 2 USC 632.

"(5) include a heading entitled 'Debt Increase as Measure of Deficit' in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years; and

"(6) include a heading entitled 'Display of Federal Retirement Trust Fund Balances' in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds.".

SEC. 13204. PAY-AS-YOU-GO PROCEDURES.

2 USC 632.

Section 301(b) of the Congressional Budget Act of 1974 (as amended by section 13203) is further amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(7) set forth pay-as-you-go procedures for the Senate whereby—

"(A) budget authority and outlays may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concurrent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

"(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

"(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

"(D) the appropriate committee shall report appropriately revised allocations pursuant to section 302(b) to carry out this paragraph; and

"(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives.".

SEC. 13205. AMENDMENTS TO SECTION 303.

2 USC 634.

(a) IN GENERAL.—Section 303(a) of the Congressional Budget Act of 1974 is amended—

(1) by repealing paragraph (5),

(2) by striking "or" at the end of paragraph (4),

(3) by inserting after paragraph (4) the following new paragraphs:

"(5) in the Senate only, new spending authority (as defined in section 401(c)(2)) for a fiscal year; or

"(6) in the Senate only, outlays,"; and

(4) by inserting after "the concurrent resolution on the budget for such fiscal year" the following: "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)".

(b) EXCEPTIONS.—Section 303(b) of such Act is amended—

(1) by striking "Subsection (a)" and inserting "(1) In the House of Representatives, subsection (a)" and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(2) by inserting at the end the following new paragraph:

"(2) In the Senate, subsection (a) does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.".

SEC. 13206. AMENDMENTS TO SECTION 308.

(a) REPORTS AND SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS.—(1) Section 308(a)(1) of that Act is amended— 2 USC 639.

(1) in the matter preceding subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)";

(2) in subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)"; and

(3) in subparagraph (C) by inserting after "such fiscal year" the following: "(or fiscal years)".

(b) CONFORMING AMENDMENT.—Section 308(a)(2) of that Act is amended by inserting after "fiscal year" the following: "(or fiscal years)".

(c) ADDITIONAL CONFORMING AMENDMENT.—Section 308(b)(1) of that Act is amended—

(1) by striking "for a fiscal year" in the first sentence and inserting "for each fiscal year covered by a concurrent resolution on the budget"; and

(2) by striking "such fiscal year" in the second sentence and inserting "the first fiscal year covered by the appropriate concurrent resolution".

SEC. 13207. STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER.

(a) IN GENERAL.—The Congressional Budget Act of 1974 is amended—

(1)(A) in section 302(c), by striking "bill or resolution, or amendment thereto" and inserting "bill, joint resolution, amendment, motion, or conference report"; 2 USC 633.

(B) in section 302(f)(1), by inserting "joint" before "resolution" the second and third places it appears and in section 302(f)(2), by striking "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report";

(C) in section 303(a), by striking "bill or resolution (or amendment thereto)" and inserting "bill, joint resolution, amendment, motion, or conference report"; 2 USC 634.

(D) in section 306, by striking "bill or resolution, and no amendment to any bill or resolution" and inserting "bill, resolution, amendment, motion, or conference report"; 2 USC 637.

(E) in section 311(a), by— 2 USC 642.

(i) striking "bill, resolution, or amendment" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any conference report on any such bill or resolution";

(F) in section 401(a), by— 2 USC 651.

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "(or any amendment which provides such new spending authority)";

2 USC 651.

(G) in section 401(b)(1), by—

(i) striking "bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report, as reported to its House"; and

(ii) striking "(or any amendment which provides such new spending authority)"; and

2 USC 652.

(H) in section 402(a), by—

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any amendment"; and

2 USC 633.

(2) in section 302(f)(2), by striking "outlays or new budget authority" and inserting "outlays, new budget authority, or new spending authority (as defined in section 401(c)(2))".

(b) POINTS OF ORDER IN THE SENATE.—

(1) Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

"EFFECTS OF POINTS OF ORDER

2 USC 643.

"SEC. 312. POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.

"(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE.—In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.".

(2) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 311 the following new item:

"Sec. 312. Effect of points of order.".

(c) ADJUSTMENT IN THE SENATE OF ALLOCATIONS AND AGGREGATES TO REFLECT CHANGES PURSUANT TO SECTION 310(c).—Section 310(c)

2 USC 641.

of the Congressional Budget Act of 1974 is amended by—

(1) inserting "(1)" before "Any committee";

(2) redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) inserting at the end the following new paragraph:

"(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the

Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

"(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.".

(d) RECONCILIATION INSTRUCTIONS.—Section 310(a)(4) of the Congressional Budget Act of 1974 is amended by inserting after "(3)" the following: "(including a direction to achieve deficit reduction)". 2 USC 641.

SEC. 13208. STANDARDIZATION OF ADDITIONAL DEFICIT CONTROL PROVISIONS.

(a) Section 904 of the Congressional Budget Act of 1974 is amended— 2 USC 621 note.

(1) by amending subsection (c) to read as follows:

"(c) WAIVER.—Sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. Sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. "; and

(2) in subsection (d) by inserting at the end the following: "An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985".

(b) Section 275(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended— 2 USC 900 note.

(1) in subparagraph (C), by striking the final word "and";

(2) in subparagraph (D), by striking the final period and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(E) the second sentence of section 904(c) of the Congressional Budget and Impoundment Control Act of 1974 and the final sentence of section 904(d) of that Act."

SEC. 13209. CODIFICATION OF PRECEDENT WITH REGARD TO CONFERENCE REPORTS AND AMENDMENTS BETWEEN HOUSES.

Section 305(c) of the Congressional Budget Act 1974 is amended— 2 USC 636.

(1) in paragraph (1)—

(A) by striking the first sentence; and

(B) by inserting after "consideration of the conference report" the following: "on any concurrent resolution on the budget (or a reconciliation bill or resolution)"; and

(2) in paragraph (2), by inserting "(or a message between Houses)" after "conference report" each place it appears.

SEC. 13210. SUPERSEDED DEADLINES AND CONFORMING CHANGES.

The Congressional Budget Act of 1974 is amended—

2 USC 636. (1) in section 305, by striking subsection (d) and redesignating subsection (e) as subsection (d); and

2 USC 641. (2) in section 310(f), by striking paragraph (1) and by striking "(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—".

SEC. 13211. DEFINITIONS.

(a) BUDGET AUTHORITY.—Section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 is amended to read as follows: 2 USC 622.

"(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

"(A) IN GENERAL.—The term 'budget authority' means the authority provided by Federal law to incur financial obligations, as follows:

"(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

"(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

"(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

"(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

"(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

"(C) NEW BUDGET AUTHORITY.—The term 'new budget authority' means, with respect to a fiscal year—

"(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year s [85] a result of a reappropriation; or

"(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.".

2 USC 622 note. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective for fiscal year 1992 and subsequent fiscal years.

[85] So in original. Probably should be "as".

SEC. 13212. SAVINGS TRANSFERS BETWEEN FISCAL YEARS.

Section 202 of Public Law 100-119 is repealed. 2 USC 909.

SEC. 13213. CONFORMING CHANGE TO TITLE 31.

(a) LIMITATIONS ON EXPENDING AND OBLIGATING.—Section 1341(a)(1) of title 31, United States Code, is amended—

(1) in subparagraph (A), by striking the final word "or";

(2) in subparagraph (B), by striking the final period and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

"(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) LIMITATION ON VOLUNTARY SERVICES.—Section 1342 of title 31, United States Code, is amended by inserting at the end the following: "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.".

SEC. 13214. THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.

(a) THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.—Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended— 2 USC 644.

(1) in subsection (a)—

(A) by inserting after "(a)" the following: "IN GENERAL.—";

(B) by inserting after "1974" the following: "(whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985";

(2) in subsection (d) by inserting after "(d)" the following: "EXTRANEOUS PROVISIONS.—";

(3) in subsection (d)(1)(A) by inserting before the semicolon "(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph)";

(4) in subsection (d)(1)(D) by striking "and" after the semicolon;

(5) in subsection (d)(1)(E), by striking the period at the end and inserting "; and";

(6) in subsection (d)(1) by adding at the end the following new subparagraph:

"(F) a provision shall be considered extraneous if it violates section 310(g).";

(7) in subsection (d)(2), by inserting after "A" the first place it appears the following: "Senate-originated"; and

(8) by adding at the end the following new subsections:

"(e) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the

Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

"(f) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

"(g) DETERMINATION OF LEVELS.—For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.".

(b) TRANSFER OF BYRD RULE.—(1) Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by subsection (a), is transferred to the end of title III of the Congressional Budget Act of 1974, and designated as section 313 of that Act.

2 USC 644.

2 USC 644.

(2) Section 313 of the Congressional Budget Act of 1974 is amended by—

(A) adding at the beginning the following center heading:

"EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION";

(B) striking subsection (b), subsection (c), and the last sentence of subsection (a); and

(C) redesignating subsections (d) [86] (e), (f), and (g) as subsections (b), (c), (d) and (e), respectively.

(3) Subsection (a) of the first section of Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) is enacted as subsection (c) of section 313 of the Congressional Budget Act of 1974.

2 USC 644.

(4) Section 313 of the Congressional Budget Act of 1974 is amended—

(A) in subsections (a), (b)(1)(A), and (c), by striking "of the Congressional Budget Act of 1974";

(B) in subsection (a), by striking "(d)" and inserting "(b)";

(C) in subsection (b)(2)(C), by adding "or" at the end thereof;

[86] So in original. Probably should be "(d),".

(D) in subsection (c), by striking "when" and inserting "When";

(E) in subsection (c)(1), by striking "(d)(1)(A) or (d)(1)(D) of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985" and inserting "(b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F)"; and

(F) in subsection (c)(2), by striking "this resolution" and inserting "this subsection".

(5) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item for section 312 the following new item:

"Sec. 313. Extraneous matter in reconciliation legislation.".

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

2 USC 632 note.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

2 USC 632.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

SEC. 13302. PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

2 USC 632 note.

(a) IN GENERAL.—It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment—

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration), (B) such net increase,

together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under consideration), (B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION.—In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means—

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to section 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would become effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

SEC. 13303. SOCIAL SECURITY FIREWALL AND POINT OF ORDER IN THE SENATE.

(a) CONCURRENT RESOLUTION ON THE BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting a semicolon; and by adding after paragraph (5) the following new paragraphs: 2 USC 632.

"(6) For purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

"(7) For purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.".

(b) POINT OF ORDER.—Section 301(i) of the Congressional Budget Act of 1974 is amended to read as follows:

"(i) It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported to the Senate that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.".

(c) COMMITTEE ALLOCATIONS.—

(1) Section 302(a)(2) of the Congressional Budget Act of 1974 is amended by inserting after "appropriate levels of" the following: "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,". 2 USC 633.

(2) Section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting before the period the following: "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the

fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years".

2 USC 633.

(3) Section 302(f)(2) of such Act is further amended by adding at the end the following: "In applying this paragraph—

"(A) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;

"(B) estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).".

(d) POINT OF ORDER UNDER SECTION 311.—(1) Subsection (a) of

2 USC 642.

section 311(a) of the Congressional Budget Act of 1974 is redesignated as subsection (a)(1) and paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(2) Section 311(a) of such Act is amended by inserting at the end the following new paragraph:

"(2)(A) After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority or total budget outlays or social security outlays set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

"(B) In applying this paragraph—

"(i)(I) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues

specified in the most recently agreed to concurrent resolution on the budget;

"(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

"(ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(II) estimated social security revenues shall be deemed to be reduced by the excess of estimated social security outlays (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

"(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b)."

SEC. 13304. REPORT TO THE CONGRESS BY THE BOARD OF TRUSTEES OF THE OASDI TRUST FUNDS REGARDING THE ACTUARIAL BALANCE OF THE TRUST FUNDS.

Section 201(c) of the Social Security Act (42 U.S.C. 401(c)) is amended by inserting after the first sentence following clause (5) the following new sentence: "Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).".

SEC. 13305. EXERCISE OF RULEMAKING POWER. 2 USC 900 note.

This title and the amendments made by it are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as a part of the rules of each House, respectively, or of that House to which they specifically apply,

and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

2 USC 632 note.

SEC. 13306. EFFECTIVE DATE.

Sections 13301, 13302, and 13303 and any amendments made by such sections shall apply with respect to fiscal years beginning on or after October 1, 1990. Section 13304 shall be effective for annual reports of the Board of Trustees issued in or after calendar year 1991.

Subtitle D—Treatment of Fiscal Year 1991 Sequestration

2 USC 902 note.

SEC. 13401. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—Upon the enactment of this Act, the orders issued by the President on August 25, 1990, and October 15, 1990, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

(b) AMOUNTS RESTORED.—Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequestrable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

(c) FURLOUGHED EMPLOYEES.—(1) Federal employees furloughed as a result of the lapse in appropriations from midnight October 5, 1990, until the enactment of House Joint Resolution 666 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

(2) All obligations incurred in anticipation of the appropriations made and authority granted by House Joint Resolution 666 for the purposes of maintaining the essential level of activity to protect life and property and bringing about orderly termination of government functions are hereby ratified and approved if otherwise in accord with the provisions of that Act.

Subtitle E—Government-sponsored Enterprises

2 USC 621 note.

SEC. 13501. FINANCIAL SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES.

(a) DEFINITION.—For purposes of this section, the terms "Government-sponsored enterprise" and "GSE" mean the Farm Credit System (including the Farm Credit Banks, Banks for Cooperatives, and Federal Agricultural Mortgage Corporation), the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.

(b) TREASURY DEPARTMENT STUDY AND PROPOSED LEGISLATION.—

(1) The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

(2) The study shall include an objective assessment of the financial soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing.

(c) CONGRESSIONAL BUDGET OFFICE STUDY.—

(1) The Congressional Budget Office shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs.

(2) The study shall include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk management, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing. The study shall also include an analysis of alternative models for oversight of GSEs and of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

(d) ACCESS TO RELEVANT INFORMATION.—

(1) For the studies required by this section, each GSE shall provide full and prompt access to the Secretary of the Treasury and the Director of the Congressional Budget Office to its books and records and other information requested by the Secretary of the Treasury or the Director of the Congressional Budget Office.

(2) In preparing the studies required by this section, the Secretary of the Treasury and the Director of the Congressional Budget Office may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

(e) CONFIDENTIALITY OF RELEVANT INFORMATION.—

(1) The Secretary of the Treasury and the Director of the Congressional Budget Office shall determine and maintain the confidentiality of any book, record, or information made available by a GSE under this section in a manner consistent with the level of confidentiality established for the material by the GSE involved.

(2) The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, for any book, record, or information made available under subsection (d) and determined by the Secretary of the Treasury to be confidential under this subsection.

(3) Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(A) by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section; and

(B) he or she discloses the material in any manner other than—

(i) to an officer or employee of the Department of the Treasury; or

(ii) pursuant to the exception set forth in such section 1906.

(4) The Congressional Budget Office shall be exempt from section 203 of the Congressional Budget Act of 1974 with respect to any book, record, or information made available under this subsection and determined by the Director to be confidential under paragraph (1).

(f) REQUIREMENT TO REPORT LEGISLATION.—(1) The committees of jurisdiction in the House shall prepare and report to the House no later than September 15, 1991, legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(2) It is the sense of the Senate that the committees of jurisdiction in the Senate shall prepare and report to the Senate no later than September 15, 1991, legislation to ensure the financial safety and soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(f) PRESIDENT'S BUDGET.—The President's annual budget submission shall include an analysis of the financial condition of the GSEs and the financial exposure of the Government, if any, posed by GSEs.

Approved November 5, 1990.

Certified February 22, 1991.

Editorial note: This printed version of the original hand enrollment is published pursuant to section 2(c) of Public Law 101-466. The following memorandum for the Archivist of the United States was signed by the President on January 10, 1991, and was printed in the *Federal Register* on January 14, 1991:

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollment of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), approved on November 5, 1990, is a correct printing of the hand enrollment and if so to make on my behalf the certification specified in Section 2(c) of H.J. Res. 682 (Public Law 101-466).

Attached is the printed enrollment that was received at the White House on January 7, 1991.

This memorandum shall be published in the *Federal Register*.

The Archivist on February 22, 1991, certified this to be a correct printing of the hand enrollment of Public Law 101-508.

LEGISLATIVE HISTORY—H.R. 5835 (S. 3209):

HOUSE REPORTS: No. 101-881 (Comm. on the Budget) and No. 101-964 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 136 (1990):

Oct. 16, considered and passed House.

Oct. 17, S. 3209 considered in Senate.

Oct. 18, H.R. 5835 considered and passed Senate, amended, in lieu of S. 3209.

Oct. 26, House agreed to conference report.

Oct. 27, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):

Nov. 5, Presidential statement.