C&NW, $31 million for the Grand Trunk, $51 million for the ICG, and somewhere between $23 and $47 million for the SOO/Milwaukee. Very little of this lost traffic would be grain, so the losses will be added to what I have already described.

I want to sell Conrail to the private sector. In doing so, I am not unsympathetic to Secretary Dole's argument that Conrail's future viability is better guaranteed by the financial strength of the Norfolk Southern and the significant economic advantages of combining these two giant railroads. Yet is it fair to preserve rail service in the Northeast at the expense of rail service in the Midwest, particularly when those railroads are already in trouble?

Perhaps at the time the Norfolk Southern was designated as the preferred buyer, it appeared to be a reasonable and fair decision. But as those of us who represent the Midwestern farm States know, the circumstances have changed. Those changed circumstances require that we place new emphasis on the impact this proposed sale will have on these troubled Midwest carriers. As part of this effort, I have asked the Department of Justice to review this issue based on these changed circumstances.

In its January 29th letter to Secretary Dole, the Department of Justice discounted the diversion issue saying in part.

It may be even more difficult to determine whether such diversion would be so substantial as to render otherwise viable regional railroads incapable of providing competition in markets where they currently operate and where their exit would reduce competition significantly.

As far as the Farm States are concerned, the issue of diversions can no longer be studied in isolation. I firmly believe that the impacts of diversions must be considered in conjunction with what is going on in the farm economy.

Farmers seldom have the luxury of being the masters of their own fate. Too often, farmers have to sit by as anything from bad weather to international politics wreak havoc with their livelihood.

The Government's decision on the fate of a Northeast railroad should not be one of those uncontrollable events that deals another blow to an already staggering farm economy. It need not be if we in Congress take the time necessay to insure that the Conrail sale will not adversely affect our Midwest transporation system. Mr. President, I hope this legislation will not be brought to the floor of the Senate until we have heard from the Department of Justice on this issue.

NATIONAL HOSPICE MONTH

Mr. DOMENICI. Mr. President, on October 18, 1985, Senate Joint Resolution 155 on which I was a cosponsor became Public Law 99-125 designating November 1985 National Hospice Month. In the past I have sponsored or cosponsored several pieces of legislation to support the hospice movement, including an amendment in the 97th Congress to provide payment for hospice care under the Medicare Program. I have always voted in support of the Hospice Program, and I welcome the opportunity presented by the above resolution to enter into the CONGRESSIONAL RECORD the following remarks indicating a few of the reasons that I support this program.

Hospice care is specialized care to maintain the quality of life for the dying patient and his or her family. Hospices attempt to control pain and other symptoms so that the patient can remain as alert and comfortable as possible. They also provide emotional, social, and spiritual help for the entire family during an extremely stressful period.

The Hospice movement was started in England in 1967 by Dame Cicely Saunders. The first hospice in the United States opened in 1974 in New Haven, CT. In 1979 there were approximately 210 hospice programs in the United States. In 1984 there were well over 1,200. This amount of growth in such a short time indicates the acceptance and the need for this type of service.

Hospice care is provided largely in the home which keeps the patient close to family and familiar surroundings, and reduces the cost of care. Hospital based hospices operate from inpatient facilities with specially trained personnel who see patients anywhere in the hospital. When the patient goes home, care is coordinated between the hospice team and the home health care team. Community based hospice care is provided through home health care agencies or independently owned businesses.

In 1983 the Joint Commission on the Accreditation of Hospitals voted to add hospices to the other types of institutions already voluntarily accredited. This gave the hospice program a national forum for setting standards and establishing acceptable quality of care.

New Mexico has been in the forefront of the hospice movement since our first hospice, the Hospital Home Health Care Hospice, opened in 1978. The Home Health Care Hospice was one of the 26 hospices choosen for a HCFA demonstration project on the effectiveness of the Hospice Program. It is certified for Medicare payment and is in the process of being accredited by the Joint Commission on the Accreditation of Hospitals.

The Mesilla Valley Hospice, started in 1980, has served over 150 patients and their families since that time. They have done this with an all volunteer staff which they train themselves. They are a United Way agency in their community.

During this month we need to recognize the valuable contribution that the hospice movement has made to health care in this country. In a very short time it has become an established institution for helping patients and their families at a most difficult period of life. The workers in this program deserve our highest praise and thanks.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DURENBERGER). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

The PRESIDING OFFICER. The Senate will now resume consideration of the pending business, S. 1730, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1730) to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1986 (S. Con. Res. 32, Ninety-ninth Congress).

The Senate resumed consideration of the bill.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1039

(Purpose: to require use of American-built rigs for OCS drilling)

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ] proposes an amendment numbered 1039.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title VII of the bill, insert the following:

Given the design cycle for such weapons, the decision to proceed with them could easily have been taken more than 10 years ago. Clearly, they require substantial extra costs and they impose unwanted complications in command and control for the Soviets. They may also involve substantial operational uncertainties, such as the reliability and accuracy of guidance systems, which operate under much more difficult conditions in mobile ICBM's.

Obviously, the Soviets must have had some extra incentive to take on these burdens. It seems reasonably clear that the underlying reason was Soviet recognition that their silo-based systems were going to become vulnerable as the United States deployed more accurate missiles on land, and especially, at sea. In other words, the Soviets—much earlier than did we—decided that land mobiles were an important hedge against the certain erosion in value of their silo-based weapons.

It is however, a universal rule in nuclear affairs that what is one side's idea of a defensive measure is the other side's idea of an unwarranted increase of offensive power. Thus, it seems that the National Security Adviser, Mr. McFarlane, sees in the Soviet move toward mobility a new variant on the old theme of Soviet first strike capabilities.

Specifically, I gather that he imagines a scenario in which the Soviets, having used their silo-based missiles in a first strike against the United States, rely upon their dispersed mobile ICBM's to preclude an American counterattack against the Soviet reserve force. Hence, our President could be left with the choice of attacking Soviet cities, thereby assuring a Soviet attack against our population.

In addition to this concern, but related to it, the National Security Adviser is also said to be disturbed about the problems of verifying any arms control limits that might be placed upon the number of mobile ICBM launchers either side could have. It is the flip side of the coin. The problem of being able to locate mobile missiles accurately enough to attack them is first cousin to the problem of being able to locate them well enogh to count them. But there is a difference, and it is critical.

Let's begin with the problems of limiting mobile ICBM's through arms control. We all know that it is not currently possible to count mobile ICBM launchers with the precision available to us in counting silos. Nevertheless, I believe that the problem of counting mobile ICBM's is quite manageable.

In the first place, we have to differentiate between the quite different problems presented in monitoring the rail-mobile SS-24, as opposed to monitoring the road-mobile SS-25. The road-mobile SS-25 is susceptible to arrangements that would allow us to account for its numbers with reasonable confidence. Essentially, what is required is that such systems be confined by mutual agreement to specific regions of a country and totally banned from all others. Measures could be worked out to provide that essential support facilities for such missiles exist in no other but designated locations. And the detection of even one mobile launcher outside the designated region would be prima facia evidence of a violation.

These techniques have been well known for quite a long time. Rail-mobile systems are more difficult. By definition, they cannot be restricted to a single portion of a rail network, or their security would be compromised. The possibilities for concealment might be much greater for such systems than for road-mobile missiles, unless it develops that they have very elaborate and quite unique support requirements, which cannot be confused with other kinds of rail traffic.

Moreover, the Soviet rail-mobile system is more difficult to verify, and it has 10 RV's, which means that cheating might be a more seductive option to the Soviets, and a less acceptable risk to us, than in the case of the SS-25, their road-mobile single-warhead ICBM.

Clearly, there may be more reason to worry about the SS-24 than about the SS-25, and it would certainly not have been out of line for the United States to have proposed a ban on vehicle MIRVed missiles of that class. Of course, the logical object to have offered in exchange would be the only U.S. missile of equivalent capability: the MX.

Be that as it may, the administration has instead proposed that the Soviet Union give up its two mobile ICBM's, whose development is now complete, in exchange for the Midgetman. And it is therefore in order to ask ourselves whether, if the Soviets accepted that offer, the trade would be to our advantage.

Naturally, we would be spared the expense of developing and deploying the Midgetman. And we would be free of the concerns involved in having to keep track of Soviet mobiles, either for the purpose of attacking them in war, or counting them in peace.

But, under the terms of our own arm control proposal, we would be left with land-based forces that are vulnerable to a Soviet first strike, and vice versa—they would be vulnerable to a hypothetical American first strike. From that perspective, the outcome of the mutual vulnerability is obviously a terrible outcome. On balance, we are better off having the option to proceed with our mobile system, even if it means giving up any theoretical chance we might have to bargain it away against Soviet mobiles.

This conclusion rests on a clear mathematical basis. Price-to-attack analysis of the sort I have described in earlier speeches shows that the Midgetman and its mobile launcher have the ability to absorb such a high proportion of Soviet forces as to render the first-strike scenario that Mr. McFarlane entertains absurd. Moreover, if one is concerned about Soviet cheating in an agreement limiting mobile systems, it has to be remembered that the Midgetman's high price-to-attack would force the Soviets to cheat on a massive scale in order to make a difference.

If reports of Mr. McFarlane's views are accurate, he has been obliged to choose between the priorities of nuclear war fighters on the one hand, and arms controllers on the other. For the war fighters, the first and only priority is to know where the targets are and to have the means for attacking them. For arms controllers, there comes a point where you are prepared to allow one side to have security from a first strike, if you can get the same for yourself.

One of these paths leads to the certainty of an open-ended, never-ending search for military advantage. The other path leads at least to the chance for an agreement in which each side wins stability for itself by making security accessible to the other.

CAUTION NEEDS TO BE TAKEN ON CONRAIL SALE

Mr. ABDNOR. Mr. President, we are all aware of the deepening financial crisis in the farm communities of the Midwest. That crisis affects not only our farmers, but our financial institutions, supply industry, and our transportation industry.

That interrelationship between our farm economy and these important industries was brought home to me, once again, as I reviewed the third quarter reports of those Midwestern railroads that transport the goods produced on our Nation's farms. They do not make for pleasant reading.

Two of the largest grain hauling railroads in my area of the country are prime examples. In the first 9 months of 1985, grain loading on the Chicago & North Western [C&NW] were down 38 percent from last year, and the railroad had a net loss of $5 million for the same period.

I bring this to my colleague's attention, because, at the same time that our Midwestern railroads are reeling from the affects of the farm crisis, Washington is conjuring up a potential knockout blow in the sale of Conrail to Norfolk Southern. There is mounting evidence that this sale spells economic disaster for the railroads of the Midwest. Studies by the Interstate Commerce Commission, the U.S. Railway Association [USRA], and the railroads themselves demonstrate that such a sale will result in diminished competition and significant traffic diversions. The numbers are not insignificant. The USRA, for instance, estimates that traffic diversions resulting from a Norfolk Southern-Conrail merger will be $54 million for the

SEC. . Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following new subsection:

"(j)(1) Any vessel, rig, platform, or other structure used for the purpose of exploration or production of oil and gas on the Outer Continental Shelf south of 49 degrees North latitude shall be built—

"(A) in the United States; and

"(B) from articles, materials, or supplies at least 50 percent of which, by cost, shall have been mined, produced, or manufactured, as the case may be, in the United States.

"(2) The requirements of paragraph (1) shall not apply to any vessel, rig, platform, or other structure which was built, which is being built, or for which a building contract has been executed, on or before October 1, 1985.

"(3) The Secretary may waive—

"(A) the requirement in paragraph (1)(B) whenever the Secretary determines that 50 percent of the articles, materials, or supplies for a vessel, rig, platform, or other structure cannot be mined, produced, or manufactured, as the case may be, in the United States, and

"(B) the requirement in paragraph (1)(A) upon application, with respect to any classification of vessels, rigs, platforms, or other structures on a specific lease, when the Secretary determines that at least 50 percent of such classification, as calculated by number and by weight, which are built for exploration or production activities under such lease will be built in the United States in compliance with the requirements of paragraph (1)(A).".

Mr. HEINZ. I further ask unanimous consent that there be 3 minutes of debate allowed to each side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, this is an amendment that is virtually identical to a provision in the House reconciliation bill, the Bosco amendment.

This amendment provides that all drilling rigs used in OCS exploration shall be built in the United States from products at least 50 percent of which have been manufactured in the United States. Rigs built for contracts let prior to October 1, 1985, are exempt.

In addition, the Secretary of the Interior may waive the requirement of 50 percent U.S. content if he determines that percentage cannot be obtained in the United States, and he can waive the built-in-the-U.S. requirement where there are multiple structures under one lease; that is, if at least half of the structures will be built in the United States.

Mr. President, let me really give you the two most important arguments for this amendment.

We have not built a drilling rig in this country since 1982, with the exception of three built in the United States with contract cancellation charges owed to one U.S. yard.

This is critical technology for the United States. This technology is critical to our energy industry. And just as we do not let foreign interests bid on OCS lands, it does not make much sense to this Senator to have foreign interests totally preempt American technology when it comes to the development of those same OCS lands.

We are prohibiting foreign competition. There would still be foreign competition. At least half would probably go to foreign manufactures. But what we are saying is that this is critical technology. We do not want to see the United States wiped off the map in its ability to drill offshore, and out of the action. This capacity is essential to our national security.

I hope, Mr. President, that my colleagues with support the amendment.

I reserve the balance of my time.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I yield, in opposition, to the chairman of the Energy Committee, Senator MCCLURE.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. MCCLURE. Mr. President, I reluctantly rise in opposition. I say reluctantly because I understand the concerns of those people who are in the steel and steel fabrication business, and their lack of ability to compete against foreign competitors in the construction of offshore platforms.

But the truth of the matter, as I am told—and I believe it is at least sufficiently true to raise the doubts in my mind—is as to whether or not the oil industry of the United States can pay the additional tariff that would be necessary to keep offshore activities going if this provision is adopted.

As the Senator from Pennsylvania has noted, it is already in the House-passed reconciliation. It is an issue we will confront in the conference. I know that many of us are very much concerned about trade questions, about shipbuilding, about timber imports, about textiles, and about a whole number of different things. But this is one in which the industry has seen available cash reserves and the internal cash flows reduced by a variety of market and other conditions that make me wonder whether or not the industry could pay the cost and remain competitive against other interests or whether or not we would suddenly find a complete change of activities on the Outer Continental Shelf of the United States in favor of foreign drilling companies, and in favor of foreign oil companies.

So I have great doubts as to whether we can survive this kind of a provision, and I have a great deal of concern about the impact it would have upon Outer Continental Shelf operations.

Mr. HEINZ. Mr. President, I yield such time as I may have to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, this is technology that was developed in the United States by Americans. In large measure, it was Americans in Louisiana and California who developed the techniques of drilling on the Outer Continental Shelf. They are the best in the world at it.

Why do they have a problem competing? Well, when you talk about the platform, you are talking about two factors: steel and labor.

The American steel industry contends—and I believe there is merit to their argument—that they can hold their own in the U.S. market if you take into account the subsidy the foreign governments pay to subsidize their steel.

The other part of the problem is labor costs. Foreign labor is available at a fraction of what we pay American workers working with a welding torch to weld pieces of steel together.

Having pioneered in this area, having developed the technology, it would be a shame to see the United States——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HEINZ. Mr. President, I ask unanimous consent that each side be yielded 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object, I am not going to object. I want Senators to know we are having a very difficult time with these unanimous consent requests because Senators want to get on with things.

We agreed to the first one. We agreed to additional ones. I am not going to object at this point.

I hope everybody understands the problem we have on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. If any one is concerned about the competitive situation of the American oil industry, we ought to repeal the windfall profits tax, which has outlived its usefulness and is a great burden on that industry.

But rather than put the American industry out of this business, I believe this amendment would keep us in for half of it, which I think is reasonable enough.

Mr. HEINZ. Mr. President, we reserve the balance of our time.

Mr. MCCLURE. Mr. President, let me just indicate the size of the problem.

It is indeed a very large problem. The recent bids with respect to offshore platforms would indicate that with the "buy American" provision on the ones that would be affected the cost would double. The cost of the platform would be twice what it otherwise may be. The reasons why that occur are complex.

But let us look at what has happened under the corporate raiding that has been going on against the oil industries that has caused the divestiture of the loss of huge amounts of capital; reserves held by oil companies; the imposition of the oil fees; the tax policy of this country—and I agree with the Senator from Louisiana that

we ought to repeal that provision, but it is still there—the cash-flow is affected. The oil companies simply do not have the same kind of cash-flow they had a few years ago; it would be unwise for us that time to double the cost of the oil rig.

That is what we would do by this provision, to see that it is fabricated in the United States.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. DOMENICI. Mr. President, has the time expired on both sides?

The PRESIDING OFFICER. It has.

Mr. DOMENICI. A parliamentary inquiry, Mr. President. Is not this amendment subject to a point of order on germaneness?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I make such a point of order.

The PRESIDING OFFICER. The point of order is well taken.

Mr. DOMENICI. Does the amendment fall?

The PRESIDING OFFICER. The amendment does fall.

Mr. DOMENICI. I thank the Chair.

I understand Senator EVANS will be here with his OCS proposal and we will accommodate him with a time agreement, hopefully. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DENTON). Without objection, it is so ordered.

Mr. DOLE. Mr. President, it is my hope that after 2 hours we might be able to put together this overall time agreement on reconciliation. I have had a number of Members on each side already asking about tomorrow. We have just frittered away 2 hours this morning that we are going to have to make up some time, and I know that managers have been working very diligently to put together an agreement. I hope we will soon be in a position to propound that agreement. We have worked out, so everybody has a chance, the opportunity now to explain the amendments which is the way I think it should be, as we expressed last night with an overwhelming vote. I hope that we can, as soon as the distinguished minority leader arrives, propound the agreement and, if not, I know of no other alternative but to start and see if there are any amendments to be offered without any arrangements on time because we will have objections maybe from both sides unless there is an overall agreement.

I thank the distinguished managers of the bill and others for their cooperation, and again indicate that if we can complete action on this, hopefully it will not take quite as much time—it looks like about 4 hours—and do the Compact of Free Association, the Overseas Private Investment Corporation matter, we would then lay down the farm bill but there would not be a session tomorrow. So I urge my colleagues who might have plans for tomorrow away from Washington to help us put this together.

UNANIMOUS CONSENT AGREEMENT

Mr. DOMENICI. Mr. President, as the majority leader has indicated, I have been working with a variety of Senators and staff in an effort to arrive at a unanimous-consent agreement which would provide time for all the amendments we are aware of, and at the same time provide for moving this reconciliation bill to another bill and sending it to the House. I think we have arrived at a satisfactory unanimous-consent proposal. I should like to state the entire proposal. It has three parts. Then I will be prepared to explain any of it.

I hope we can get it done in this manner, because we have been working on this about 3 hours. If we do not get it done, then I think it is open if Senators want to offer amendments and debate, because eventually they will have that privilege.

I ask unanimous consent that the following amendments be the only amendments in order to S. 1730, that they be limited to 10 minutes each, to be equally divided unless otherwise specified, and that following the disposition of the amendments listed, S. 1730 be advanced to third reading without any intervening action. The amendments are as follows:

Evans/Metzenbaum, on OCS, 20 minutes equally divided; Wilson, on imputed interest Israel bonds; Boren, on farm credit; Packwood/Weicker/Dodd, on Social Security coverage, 2 minutes equally divided; Metzenbaum, on tobacco price supports, 20 minutes equally divided; Metzenbaum, on tobacco price supports, 20 minutes equally divided; Metzenbaum, on Medicaid, 20 minutes equally divided; the distinguished minority leader, Senator BYRD, an amendment, 10 minutes equally divided; DeConcini, on wage survey; two Bumpers amendments, on Medicare pay for liver transplants.

I further ask unanimous consent that when the Senate reaches third reading of S. 1730, the Senate turn to the consideration of H.R. 3128, a bill to make changes in spending and revenue provisions, for the purpose of deficit reduction and program improvement, consistent with the budget process; that the majority leader be recognized to move to strike all after the enacting clause in H.R. 3128, and insert the text of S. 1730, as amended; that no further action or debate shall be in order except the vote on the motion to strike and insert, third reading, and final passage.

Finally, I ask unanimous consent that no points of order under the Budget Act be waived, and that following disposition of H.R. 3128, S. 1730 be indefinitely postponed.

Mr. BYRD. Mr. President, reserving the right to object, will the distinguished manager of the bill withhold the request for a moment? Perhaps he will be willing to put in a short quorum call.

Mr. DOMENICI. I will be pleased to do that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair has a question to put to the Senator from New Mexico: After the Metzenbaum amendment on Medicaid, the Chair did not copy the rest of the amendments.

Mr. DOMENICI. That following the third Metzenbaum amendment, the unanimous consent that I propounded read Senator BYRD's amendment, 10 minutes equally divided.

The PRESIDING OFFICER. Then after that.

Mr. DOMENICI. Senator DECONCINI's wage survey.

The PRESIDING OFFICER. And Bumpers?

Mr. DOMENICI. Two Bumpers amendments, Medicare pay for liver transplants.

The PRESIDING OFFICER. So the Dole amendment originally in there is not there now.

Mr. DOMENICI. The Chair is correct.

Mr. EVANS. Mr. President, reserving the right to object, and I do not intend to object, would the Senator from New Mexico clarify? In the list of amendments would these be the only amendments authorized and no amendments to the amendments or other changes would be in order?

Mr. DOMENICI. The Senator is correct.

Mr. EVANS. I thank the Senator.

Mr. BYRD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRD. The proposed agreement specifies that "following amendments be the only amendments in order to S. 1730."

I ask the Chair if that language bars any amendments either before or after a motion to reconsider if such motion is in order from being offered to H.R. 3128 following the adoption of the motion by the distinguished majority leader.

The PRESIDING OFFICER. If the amendment on H.R. 3128 were voted and reconsidered and third reading were reached, would be reconsidered and the vote on the substitute was reconsidered, then further amendments would be in order.

Mr. BYRD. Does this agreement bar any amendment to H.R. 3128? Does this amendment bar under any and all circumstances, except unanimous consent, of course, which could open it up, any amendments to H.R. 3128 at any point the agreement having specified that there would be only certain amendments which are enumerated to

S. 1730? But it does not make any such statement with regard to H.R. 3128.

The PRESIDING OFFICER. It would require the three motions to reconsider just enumerated after the agreement has been adopted to send up H.R. 3128 to amend.

Mr. BYRD. Would the distinguished manager of the bill think it a bit of traditional insurance that he include in his request that no motions to reconsider either of these measures be in order.

Mr. DOMENICI. I would consider that, and if the distinguished minority leader has no objection I would consider my unanimous consent so modified.

Mr. BYRD. Very well.

I ask the Chair whether or not that helped any.

The PRESIDING OFFICER. That would prevent any amendments to H.R. 3128 without unanimous consent being obtained.

Mr. BYRD. I thank the Chair.

I have no objection.

Mr. DOMENICI. I need 1 minute now.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I propound the unanimous consent as previously stated and modified.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I thank the Chair.

Now, Mr. President, while we are not bound to the list of amendments in order, I understand the distinguished Senator from Washington [Mr. EVANS] is ready with the first amendment as stated with 10 minutes on each side.

Mr. EVANS. I thank the Chair.

AMENDMENT NO 1040

(Purpose: To amend section 532 of the Outer Continental Shelf Lands Act)

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS], for himself, Mr. METZENBAUM, Mr. DURENBURGER, Mr. DANFORTH, Mr. GORTON, Mr. LUGAR, and Mr. KASTEN proposes an amendment numbered 1040.

Mr. EVANS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 132, strike out line 1 and all that follows through line 23 on page 139 and insert in lieu thereof the following:

"REVISION OF SECTION 8(g)

"SEC. 532. Delete paragraphs 8(g)(2) through (4) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(g)) and insert in lieu thereof—

"(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses and rents derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly within three nautical miles of the seaward boundary of any coastal State or, in the case where a Federal tract lies partially within three nautical miles of the seaward boundary, a percentage of bonuses and rents derived from any lease issued after September 18, 1978 of such tract equal to the percentage of surface acreage of the tract that lies within such three nautical miles. Except as provided in paragraph (5), not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest threon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the United States Treasury.

"(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hyrdocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts.

"(4) The deposits in the Treasury, accounts described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

"(5)(A) Where there is a boundary dispute between the United States and a State under section 7 of this Act, the Secretary shall credit to the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 revenues from oil and gas lease sales in the area within three nautical miles of the boundary asserted by the State, if that money has not otherwise been deposited in the separate account established under section 7. Proceeds of the account established under section 7, and the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed as follows:

"(i) If a State is wholly successful in its claim under section 7, such claim shall be satisfied by the money deposited in the escrow account established by section 7. Any excess monies in the section 7 account attributable to such State shall be transferred to the 8(g) account, and any monies due that State, both restrospectively and prospectively, as a result of the 8(g) zone created by the newly established boundary shall be distributed to the State in accordance with the terms of section 533 of the Outer Continental Shelf Lands Act Amendments of 1985.

"(ii) If the United States is wholly successful in its claim under section 7, the amount of money that is necessary to satisfy the State's share as set forth under section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed from the revenues deposited in the section 7 escrow account. The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(iii) If the United States or the affected State is partially successful in its claim under section 7, after the distribution under that result, the amount of money that is necessary to satisfy the State as set forth under section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed first from the remaining monies in the section 7 escrow account, and then from the amounts deposited in the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985. The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(B) This paragraph applies to all Federal oil and gas lease sales, under this Act, including joint lease sales, occuring after September 18, 1978.

"(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the State's shares described in paragraph (2).

"(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.".

DISTRIBUTION OF 8(g) ACCOUNT

SEC. 533. (a) Prior to January 1, 1986, the Secretary shall distribute to the designated coastal Sates the sum of:

(1) The amounts due and payable to each such State under paragraph (2) of section 8(g) of the Outer Continental Shelf Lands Act, as amended by this Act, for the period between October 1, 1985, and the date of such distribution, and

(2) The amounts due each such State under subsection (b) for the period prior to October 1, 1985.

(b)(1) The funds which were deposited in the separate account in the Treasury of the United States under section 8(g)(4) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(g)(4), as it was in effect prior to the date of enactment of Section 532 of this Act shall be distributed in the following manner as a fair and equitable disposition of such funds derived from bonuses and rents and accrued interest thereon through September 30, 1985:

[In millions of dollars]

State:	
Louisiana	635
Texas	424
California	375
Alabama	73
Alsaka	46
Mississippi	15
Florida	0.03

(2) The amounts derived from bonuses, rents and royalties and accrued interest thereon through September 30, 1985, remaining in the account after distribution to the States under this subsection shall be transmitted to the miscellaneous receipts accounts of the United States Treasury.

(c) The acceptance of payment under this section shall satisfy and release any and all claims against the United States arising under, or related to, section 8(g) of the Outer Continental Shelf Lands Act, as amended, as it was in effect prior to the date of enactment of Section 532 of this Act.

IMMOBLIZATION OF BOUNDARIES

SEC. 534. Section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)) is amended by inserting before the semicolon at the end of the subsection add a comma and the following: "except that any boundary between a State and the United States under this Act which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory.".

Mr. EVANS. Mr. President, I yield 5 minutes to myself.

The PRESIDING OFFICER. The Senator form Washington is recognized.

Mr. DOMENICI. Mr. President, will the Senator yield 1 second to the Senator from New Mexico?

Mr. EVANS. I yield.

Mr. DOMENICI. Mr. President, I yield the time in opposition to the distinguished junior Senator from Louisiana [Mr. JOHNSTON].

I thank the Senator.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, the Outer Continental Shelf, section 8(g) amendments that are included in the budget reconciliation are a sham. They were included in the reconciliation report passed by the Energy Committee only after a last-minute and hastily arranged hearing for Mr. Hodel on the morning of the markup. Despite the short time and the opposition of the chairman and ranking minority member, the amendments which I offered in committee were defeated only by an 8-to-10 vote.

Let me quote from a letter from Secretary of the Interior Hodel, dated September 20, 1985, expressing concern to Senator MCCLURE regarding the OCS provisions of the reconciliation bill:

To amend that act (OCS Land Act Amendments of 1978) now without even the benefit of hearings on how those amendments will affect a program that raises more revenue for the Federal Government than any other program short of the Federal income tax is extremely unwise.

Above all else, we must remember that this reconciliation bill is part of our deficit reduction efforts. And I suspect that the primary purpose of handling this issue on the reconciliation bill is that it deals with large amounts of money. In fact, money is the overriding factor in this whole argument—and who gets how much.

DRAINAGE

In my view, however, the primary issue is a simple one—geology. The clear intent of establishing the 8(g) zones in 1978 was to compensate States for any oil and gas actually drained from State-submerged lands by Federal lessees drilling in the first 3 miles of the Federal OCS, the 8(g) zone. Nothing more and nothing less—drainage only.

Yet title V, subtitle B, of the reconciliation bill awards an arbitrary figure—27 percent of bonuses, rents, interest receipts, and royalties—from Federal OCS lands without regard to whether any drainage has actually occurred or, in fact, whether any common pools exist from which drainage could even occur. I suggest that this 27 percent is mighty generous given the fact that expert geologists agree that drainage from States range from 1 percent to 4 percent.

What about State drainage of Federal 8(g) tracts: And you should note that the Energy Committee provision does not even mention State drainage of Federal tracts—but we are only talking about Federal draining of a State tract.

Perhaps we should look further into this issue—the States sure do not appear concerned about their draining of Federal 8(g) tracts. In a reply brief for the Secretary of the Interior, appellant, versus State of Texas: Showing example of States lack of concern for draining oil/gas from shared pools between State and Federal submerged lands. Texas School Land Board, the agency charged with the duty of administering the State's submerged lands, member Mr. Furse speaking to Superior Oil leasing of State submerged lands and the draining of Federal lands:

As I said before, what this whole thing is predicated on is our being able to get more ultimate recovery, but by reason of draining the (Federal) lands to the east. I mean that is what the lynchpin of the whole thing is. That is the only thing that I can see that you have going for you. I am not against that. I think that that is fine.

Of course they do.

RECOUPMENT

In addition to the 27 percent of rents, bonuses, and royalties going to the States, the Energy Committee measure provides for sharing revenues from portions of tracts beyond the 8(g) zone. This measure requires that 100 percent of a tract's bonuses, rents, and royalties be shared with the seven States even where only a tiny portion of it is within the 8(g) zones. For example, in the case of one tract off the Texas coast, only 17 of 5,760 acres, or 0.3 percent of the total acres, are within the 8(g) zone. But under the committee bill, all the revenue from this tract would be shared with the States.

I have just described what I believe are bad provisions included in this reconciliation bill. But just recently, it has become even worse.

In a report filed with Judge Mentz on October 24, 1985, in Louisiana's section 8(g) lawsuit, Louisiana claims that S. 1730 gives Louisiana a right to 27 percent of the royalties since September 18, 1978, from all leases wholly or partially within the 8(g) zone. This includes leases issued before the 8(g) zone was even established. S. 1730 supports the attempts of Louisiana to claim these additional revenues.

This result would be appalling. Louisiana has twice failed to persuade Judge Mentz that it should share in revenues from pre-8(g) leases. And the Fifth Circuit Court of Appeals refused to hear Louisiana's interlocutory appeal.

The amendment I offer for myself and my distinguished colleague from Ohio generally provides for:

First. The escrowed section 8(g) moneys are split on a 73 percent-27 percent basis. However, this only includes bonuses, rents, and interests receipts. Royalties are distributed to the States based on drainage from State lands—Interior studies show (expert geologists) drainage at an average of 1 percent to 4 percent.

Second. Starting in fiscal year 1987 and extending to the years beyond, the Energy Committee measure recommends 37 percent of rents, bonuses, interest receipts, and royalties to the States (27 percent share plus 10 percent recoupment—provision provides that States should get 10 percent of bonuses, rents, interest, and royalties each year until a total of $477 million is distributed to the States). Under our amendment, this allotment is decreased to 27 percent for bonuses, rents, and interest receipts and royalties for any resource actually drained from State-submergerd land—in essence, recoupment is deleted.

Third. And the only time period in question is after the creation of the section 8(g) zone—September 18, 1978.

BUDGETARY CONCERNS

Now allow me to turn to what should most concern this body, as we consider this bill to cut the deficit.

The bottomline is that the budget reconciliation measure will: First, cost an additional $580 million over the fiscal year 1986 to fiscal year 1988 period compared to my amendment; second, conservatively cost $7.3 to $8 billion over the next 30 years ($500 million due to recoupment) of which $2.3 to $3 billion comes from revenues generated from pre-1978 leases; and third, give money to seven coastal States which properly belongs to all American taxpayers.

We must realize that our deficit problems extend past fiscal year 1988. In fact, the problem with the reconciliation approach is that we are establishing a permanent solution based on 3-year projections (fiscal year 1986-fiscal year 1988) on young leases that won't reach maturity for another 5 years or so. The difference between our amendment and the reconciliation provisions will be greatest after 1988.

The amendment offered by my colleague from Ohio and myself remains

still a generous offer. Of the current section 8(g) moneys—$6.1 billion, 27 percent of the bonuses and rents, and a percentage of royalties based on drainage will be distributed to States. In addition, 27 percent of all future bonuses and rents and of future royalties based on drainage will be given to the States. However, the distribution of current and future royalty revenues will come from 8(g) leases issued after 1978.

An additional 3-year $580 million savings will be experienced over the savings experienced under the reconciliation bill—$242 million in fiscal year 1986 alone—that is more than we spend on 297 Federal domestic grant assistance programs.

Interior studies show a $7.3 to $8 billion payout over a 30-year period under the reconciliation provisions. At least $5 billion is based on new discoveries, especially off the California coast—largest discovery in recent years, second only to Prudhoe Bay—and the fact that full production of these new discoveries are realized 8 to 15 years after discovery.

The remaining amount reflects royalty revenues that are distributed from leases issued before 1978—$800 million to $1 billion from 1978 to 1985 and $1.5 to $2 billion from revenues generated beyond 1985.

In summary, my amendment would justifiably award States 8(g) royalty revenues based on the Federal Drainage of State resources, which expert geologists indicate average drainage to be 1 to 4 percent. Under the reconciliation approach, 27 percent of royalty revenues will be distributed from leases issued before and after the existence of the 8(g) zone. The cost—at least $7.5 billion.

I close, Mr. President, by saying that the White House very clearly has pointed that out in the following words:

> The bill's provisions to settle the OCS issue is unacceptable.

I agree with that provision.

Mr. GORTON. Mr. President, I am a cosponsor of the amendment my colleagues, Mr. EVANS and Mr. METZENBAUM, are offering to revise section 8(g) of the Outer Continental Shelf Lands Act. This amendment would resolve a dispute between seven coastal States and the Federal Government as to the fair and equitable distribution of revenues from Federal offshore oil and gas leases. Section 8(g) was enacted in 1978 to provide a means to compensate States for losses due to the draining of oil and gas from Federal leases which involve common pools underlying both State and Federal waters.

Mr. President, I believe the Evans/Metzenbaum amendment is far more responsive to the mandate to reduce Federal spending than the section 8(g) provision passed by the Senate Committee on Energy and Natural Resources in its budget reconciliation bill.

The Energy Committee's provision would give coastal States 27 percent of the rents, bonuses and royalty revenue for oil and gas tracts lying wholly or partially within the 8(g) zone—an area 3 to 6 miles off the coast of most States. Under the Energy Committee's scheme, these revenues would be given to the States regardless of whether a common pool of oil or gas existed. In other words, this provision would no longer be a mechanism to compensate States for drainage losses. It would be an outright gift to the States of revenue that rightfully belongs to the American Federal taxpayer.

Moreover, the Energy Committee's provision is ambiguous as to whether the distribution formula would apply to leases issued prior to the enactment of section 8(g) in 1978. Section 8(g) does not contain any provision indicating it has retroactive effect. Twice a U.S. district court in Louisiana has rejected the State of Louisiana's argument that it is entitled to pre-1978 lease revenues. The fifth circuit has also refused to hear such a claim. Based on the language of the Energy Committee's 8(g) provision, however, the attorney general for the State of Louisiana is once again asserting the right to revenues from pre-1978 Federal leases. This claim alone would cost the United States $2.3 to $3 billion.

I find it disconcerting that the Energy Committee has chosen a bill intended to achieve savings in Government spending programs, as a vehicle to give away billions of dollars of Federal revenue from offshore oil and gas resources to a few coastal States.

It is estimated that the formula for the distribution of revenues as passed by the Energy Committee would cost the Federal Government from $7.3 to $8 billion in royalty revenues over the next 30 years, and $580 million over the next budget period. This is not compensation, this is an outright raid on the U.S. Treasury. At a point when this body is struggling with very difficult fiscal issues, such as the debt limit and the Gramm-Rudman amendment, this effort on the part of a few coastal States to grab more than their rightful share of Federal revenues seems particularly egregious.

The amendment offered by Mr. EVANS and Mr. METZENBAUM will distribute the revenues from 8(g) leases in a fair and equitable manner. The States would receive 27 percent of the bonuses and rents from any tract which lies wholly within the 8(g) zone. For tose tracts which lie partially within the 8(g) zone, 27 percent of the bonuses and rents would be given to the States on the basis of the percentage of surface acreage which lies within the zone. Royalty revenues from common pools of oil and gas would be distributed on the basis of actual loss to the State. This amendment would also clarify that States are only entitled to a share of the revenues from leases occurring after 1978, when section 8(g) was enacted.

Mr. President, I hope that the majority of my colleagues will join with me in supporting the amendment offered by Mr. EVANS and Mr. METZENBAUM. Not only will this amendment save the Federal Government billions of dollars in revenue payments over the next 30 years, it will also save an additional $580 million over the 1986-88 budget period. Clearly, in these times of mounting Federal deficits, we simply cannot afford the extremely generous revenue distribution formula proposed by the Energy Committee.

Mr. JOHNSTON. Mr. President, the statement of the Senator from Washington is wrong, wrong, wrong, demonstrably wrong, palpably wrong. And if my colleagues will lend me their ears for just a few minutes, I can show you why it is wrong.

No. 1, it has been claimed in a literal blitz of Dear Colleague letters that what the Metzenbaum-Evans amendment seeks to do is to grant the States drainage. There is not one word about drainage in this amendment—not a word—and yet we are told, time and time again, that that is what this amendment would do is grant to the States drainage.

Do you know what this amendment does, Mr. President? If you look over on page 3, it gives to the Secretary and the Governor of a coastal State the right to enter into an agreement to divide revenues.

Now, how would the Senator from Washington or the Senator from Ohio feel if we had put in an amendment that granted to the States all the money and granted to the Federal Government the right to come in and ask the States for some money?

Mr. President, it is a permissive right of the States to seek money. That is all they have in their amendment. There is no right granted to a State. And let us make that clear to start with.

Second, Mr. President, the amounts of money that have been claimed that this amendment would cost are nothing short of preposterous, absolutely preposterous. We are told at various times by Secretary Hodel that it could be $6 to $12 billion on September 24; on September 17, he says $4 billion to $5 billion; Senator METZENBAUM says, on October 11, $4.5 billion to $6.5 billion; and the latest Dear Colleague letter says $4 billion plus $2.3 billion to $3 billion, or about $7 billion. Absolutely preposterous.

Why do I say that, Mr. President? Because there is not one study, there is not one geology at all to support those findings. Believe me, there is not. We have tried our dead level best to get from Interior any studies and they say they do not exist.

There is only one study supported by any geology on this whole subject, and that has to do with the State of California, and it does not support more than $800 million in total reserves. And yet we are given this pre-

posterous statement of $6 billion to $12 billion.

Mr. President, I believe the Department of the Interior, if they are the ones who furnished these figures, is to be condemned for furnishing that kind of information. It is not correct and it does not make sense, Mr. President.

If we were talking about $7.5 billion worth of oil in the 8(g) zone, a little strip of land 3 miles wide, you have to have a total of $166 billion worth of oil in that 3-mile strip—$166 billion. Why, Mr. President, you would have to discover two or three Prudhoe Bays at $70 a barrel in order to support that kind of revenue. It is preposterous, absolutely preposterous.

Mr. President, look at the revenue. In 7½ years, the total amount produced for the States in the 8(g) zone is a total of not $7.5 billion, but $180 million. Now, that is $24 million a year. If you multiply that by 30 years, that is $720 million over a 30-year period at the present rate of production.

Mr. President, please understand, the figures from the Department of the Interior are absolutely preposterous, supported by no geology, supported by no methodology, supported by nothing except an ad hoc picking up into the air for some figures and throwing them out on this Senate floor.

Mr. President, what the Department of the Interior wants to do is have it both ways. They want to come in here and defeat the Synfuels Corporation, which they have done by saying that the claims are preposterous because they are based on $70-a-barrel oil. And we defeated that. Then they want to come back here, on the other side, and say, "But, yes, oil is worth $70 a barrel and we are going to find $166 billion worth of oil in the 8(G) zone, a little strip 3 miles wide.

Let me tell you, Mr. President, if there is that kind of oil in that 3-mile-wide strip, we do not need to worry about Middle Eastern oil.

The PRESIDING OFFICER. The Senator's 5 minutes allocated for himself has expired.

Mr. JOHNSTON. I yield myself 1 additional minute, Mr. President.

Mr. President, our legislation is consistent with what the House has done, what two committees of the House have done, what the chairman of the Budget Committee in the Senate has done, and the chairman of the Budget Committee in the House has done. And what the House floor has done is consistent with the only Federal court decision on the subject, that one in Texas, and it is also consistent with what the Department of the Interior has done in Texas.

Mr. President, I hope the Senate will uphold the position of the committee. I reserve the remainder of my time.

Mr. EVANS. Mr. President, I wonder if the Senator from Louisiana would give me an explicit and short answer to the question of whether he then would be willing to put a cap of $810 million on the total amount to be distributed to the States over the next 30 years?

Mr. JOHNSTON. I would say to my colleague that I was approached earlier on the question of putting caps, and I said if the Department of the Interior and OMB want to negotiate seriously on that, we are ready to do business. We did not hear another thing. If you want to ask me, do I want to bargain against myself on the floor, and then have to later bargain with OMB or the White House, the answer is no, not at this point.

But I was willing to earlier, and the Department of the Interior knows that.

Mr. EVANS. I thank the Senator.

Mr. MURKOWSKI. Mr. President, I wonder if I can ask my colleague for 3 minutes for a statement.

Mr. JOHNSTON. I yield 1 minute.

Mr. MURKOWSKI. I thank my colleague.

I support the Senate Energy and Natural Resources Committee position for a fair and equitable distribution, and I join with my colleague, the senior Senator from Alaska, Senator STEVENS, in citing that the formula for sharing is a modest one. But I would like to indicate the ample reason why States should share in the revenues.

There is an impact—the infrastructure, the burdens to the State, the socioeconomic and school requirements environmental risks, all of which associate themselves with sharing for a small amount of only 27 percent of the revenues generated by leases falling within a very narrow 3-mile zone of the Outer Continental Shelf recognizing that the States receive 50 percent of all revenues generated by all other oil, gas, and other mineral leases on Federal and onshore lands.

So it is obvious, Mr. President, that this is an equitable action taken by the Energy Committee. I urge my colleagues to reject the amendment on the floor, and support the Energy Committee's provision.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, will my colleague from Washington yield me a minute?

Mr. EVANS. I do indeed yield a minute to my distinguished colleague from Minnesota.

Mr. DURENBERGER Mr. President, our colleague from Louisiana is wrong, wrong, wrong, and our colleague from Washington is right, right, right.

Mr. President, I rise in support of the Evans/Metzenbaum amendment to distribute OCS 8(g) revenues to affected coastal States in accordance with the budget reconciliation instructions.

There are some issues which lurk in the shadows of this institution just waiting for the opportunity to slip through unnoticed. And sharing revenues from Federal OSC activities with coastal States is one of them.

I have had some experience with this issue as chairman of the Subcommittee on Intergovernmental Relations. It was in that role that I opposed the so called "Outer Continental Shelf Revenue Sharing bill." This was a $300 million program with a 5 percent per year growth rate built in which would have added almost $1 billion to the Federal deficit.

If my colleagues will recall, when this bill was reported, it provoked such opposition that it was never brought to the floor. And later that year, when proponents attempted to slip it through on a fisheries bill we were able to send it back into the shadows.

What we have before us today in the reconciliation measure reported by the Senate Energy Committee is another attempt by proponents of OCS revenue sharing to take a larger than fair slice of the Federal pie.

The committee language goes far beyond the reconciliation instructions contained in Senate Concurrent Resolution 32. The budget resolution assumed enactment of legislation to settle the 8(g) dispute by giving States a 27-percent share of the bonuses and rents that have been generated in the 8(g) area. Such an amendment would bring $4.509 billion into the U.S. Treasury in fiscal year 1986 and $1.768 in fiscal year 1986–87 by freeing up 73 percent of the escrowed 8(g) funds. The balance—$1.832 billion—would be distributed to the affected States.

While it appears that the committee exceeded their target, what the committee did, in effect, was change the size of the 8(g) pot by including royalties, allowing the States to share revenues from tracts straddling the 8(g) zone and making these changes retroactive back to the 1978 OCS Lands Act which created the 8(g) account.

This slight of hand will actually cost the Federal Government, at best nearly $6 billion, and at worst $8 billion, over the next 30 years. That's $6 or $8 billion that could go to reducing the Federal deficit or to the States through the land and water conservation fund. It is a raid on the Treasury, and it is greed, pure greed on the part of the benefiting coastal States; Texas, Louisiana, California, Alaska, Alabama, Mississippi, and Florida.

But beyond the fact that it rapes the Federal Government, there are sound reasons to oppose this change. It is poor policy. What it does is provide no-strings-attached Federal dollars to seven States at the expense of the other 43 States.

I ask unanimous consent that a chart showing the net effect to the taxpayers of each State be inserted in the RECORD at this point. This chart shows very clearly the winners and losers of the Energy Committee's proposal.

There being no objection, the table was ordered to be printed in the

RECORD, as follows:

DISTRIBUTION TO STATES OF ESTIMATED FUTURE ROYALTIES FROM 8(g) TRACTS

[Dollar amounts in millions]

State	Estimated future royalties [1]	Percent of estimated total 1985 Federal tax burden [2]	Tax burden of total estimated future royalties [3]	Net effect to the taxpayers of each State [4]	
				Gain	Loss
Alabama	$150	1.25	$50	$100	
Alaska	340	.32	13	327	
Arizona		1.11	44		44
Arkansas		.69	28		28
California	1,200	11.86	477	723	
Colorado		1.47	59		59
Connecticut		1.83	74		74
Delaware		.29	12		12
Florida		4.39	177		177
Georgia		2.01	81		81
Hawaii		.43	17		17
Idaho		.31	13		13
Illinois		5.63	226		226
Indiana		2.16	87		87
Iowa		1.14	46		46
Kansas		1.09	44		44
Kentucky		1.21	45		45
Louisiana	1,300	1.78	71	1,229	
Maine		.38	15		15
Maryland		2.07	83		83
Massachusetts		2.74	110		110
Michigan		3.76	151		151
Minnesota		1.76	71		71
Mississippi	30	.72	29	1	
Missouri		1.95	78		78
Montana		.30	12		12
Nebraska		.62	25		25
Nevada		.42	17		17
New Hampshire		.41	16		16
New Jersey		4.05	163		163
New Mexico		.43	19		19
New York		8034	335		335
North Carolina		2.01	81		81
North Dakota		.27	11		11
Ohio		4.48	180		180
Oklahoma		1.41	57		57
Oregon		1.04	42		42
Pennsylvania		5.05	203		203
Rhode Island		.40	16		16
South Carolina		1.80	40		40
South Dakota		.23	9		9
Tennessee		1.59	64		64
Texas	1,000	7.28	293	707	
Utah		.52	21		21
Vermont		.18	7		7
Virginia		2.39	96		96
Washington		2.01	81		81
West Virginia		.65	26		26
Wisconsin		1.91	77		77
Wyoming		.26	10		10
District of Columbia		.36	14		14
Total	4,020	100			

[1] MMS lower bound estimate of 27 percent of future royalties distributed to 8(g) States over the next 30 yrs. All dollars are nominal dollars.

[2] Based on data from "Tax Foundation's Monthly," vol. 28, No. 4, April 1984.

[3] Estimate of the additional tax that each State would have to pay if 8(g) receipts from future royalties (27 percent) were distributed to 8(g) States instead of being retained in the Federal Treasury—assuming that 1985 tax burden estimate is representative of the States' future tax burden over the next 30 yrs.

[4] Net effect (gain/loss) to the taxpayers of each State if royalties are distributed to 8(g) States instead of being retained in the Federal Treasury (8(g) distribution minus tax burden).

Source: Department of Interior, Minerals Management Service.

Mr. DURENBERGER. Mr. President, the proponents argue that it fulfills section 8(g) of the OCS Lands Act Amendments of 1978 by providing for the "fair and equitable" distribution of revenues from 8(g) leasing activities.

When Congress passed the Outer Continental Shelf Lands Act Amendments in 1978, it had a specific problem in mind, drainage. The basis of this problem was the common law rule of capture which applied to oil and gas production. Under this rule, a common pool of oil or gas underlying both State and Federal submerged lands would belong to whoever first produces it from either side of the jurisdictional line. If the Federal Government were to develop OCS resources adjacent to State submerged lands, adjacent States and would be faced with potential drainage of common oil and gas pools underlying state submerged lands. While those States could drill offset wells to Federal leases to protect their right to pursue the resource, this would lead to an inefficient doubling of the amount of drilling activity.

To solve this dilemma Congress chose, when they enacted the OCS Lands Act, to share revenues produced from Federal leases, in the 3-mile zone off of State waters, with coastal States from such common oil and gas pools. It was the intent of the budget resolution to settle the distribution of these revenues once and for all. Unfortunately, members got greedy and took more than what was fair and equitable.

Mr. President, the opponents of this amendment contend that this division is equitable on two grounds. First, it is contended that OCS mineral development is the only exception to a long-standing Federal policy of sharing with affected States, a significant portion of receipts from resource development activities on federally owned lands. I take exception with this assertion on two counts. First, although funds are not specifically earmarked from OCS receipts, Congress has in fact recognized that off-shore development produces some adverse effects on coastal States and has created specific programs to deal with the problem. The Coastal Zone Management Programs were funded at $36 million in fiscal year 1985, up from $28 million in fiscal year 1984. And, these programs exist exclusively for the benefit of coastal States.

My second exception to the so-called equity argument is that a comparison of off-shore receipts with on-shore receipts is misleading and invalid. The status of on-shore Federal lands was in dispute from the time the States containing this land came into the Union. This dispute was settled, for the most part, with the passage of the Mineral Leasing Act of 1921, in which it was agreed that the Federal Government would retain possession of these lands and their minerals. But, in exchange, the Federal Government agreed to share a portion of the receipts from these lands with the State in which the lands lay.

The payments-in-lieu-of-taxes programs, exist for entirely different reasons than revenue sharing programs. Federal property is tax exempt, but States containing this property must provide public services for it. Congress recognized that the local governments providing the public services should be compensated, since they could not levy their property tax. These are not "shared receipts" in the true sense. They represent Congress' best judgment as to the burden these lands place on State and local governments. In this sense, PILT programs resemble more the coastal zone management programs than shared revenues.

The status of off-shore land is quite different. Prior to World war II, most coastal States claimed jurisdiction over submerged lands extending outward from the coast to a 3-mile limit. In 1945, President Truman issued a proclamation asserting Federal jurisdiction beyond the 3-mile limit. This was not disputed by the States. Then, in 1947, the Supreme Court ruled that, contrary to State claims, the Federal Government also had jurisdiction over submerged lands up to the 3-mile limit. Finally, in 1953, Congress rejected this view and passed the Submerged Lands Act to overturn the Supreme Court's decision. In other words, Congress gave States jurisdiction over submerged lands up to the 3-mile limit, lock, stock, and barrel. The 1953 act went so far as to give some coastal States jurisdiction extending out to as much as 10.5 nautical miles to reflect prior boundary claims.

So, Mr. President, it is true that the Federal Government does not share revenues from off-shore lands over which there has been an historic dispute, as with on-shore lands. Instead, Congress actually gave these lands outright to the coastal States. If there is a question of "inequity" involved, it is certainly not one of injustice done to the coastal States. What the committee has sought to do is abuse the generosity of the Federal Government.

The second "equity" argument is that the development of off-shore lands produces adverse social and economic effects on the coastal States, and further, that current Federal policy does not address these detrimental impacts. The fact that such developmental impacts exist is not at issue. As I indicated earlier, Congress recognizes that they exist and has made provision for compensating coastal States in the coastal zone management programs.

The more appropriate question is, How detrimental are the effects of off-shore development? Coastal States claim they are substantial and that existing programs do not adequately address them. Beyond the fact the Federal Government takes almost total responsibility for the environmental damage that might occur from off-shore development, the problems that have been encountered in letting off-shore leases demonstrates the control States have over any development.

A 1982 GAO report sheds considerable light on this question. I ask unanimous consent that the relevant portion of that report be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ENERGY DEVELOPMENT CAUSES VARYING IMPACTS AND RESPONSES

Energy development effects on a community can be tracked in phases. At the beginning of the development phase, public sector costs for facilities and services rise

much faster than the revenues generated. This can produce negative socioeconomic effects on the host community. These impacts usually stem from the influx of energy workers and their families which increase an area's population to the point of burdening the existing housing and public facilities and services. Some problems which might occur include a short supply of permanent and rental housing, inadequate solid waste disposal, and overburdened medical facilities, schools, transportation systems, and law enforcement. Also, the ability of communities to handle these impacts vary depending on the size of the existing population, the infrastructure in place at the time of the impacts, and the resources available to the community.

As the development phase ends, revenues generally outrun costs by a wider margin than costs exceeded revenues prior to the development. This is because energy development usually brings significant economic benefits to an area. For example, new population generally brings an increased tax base in the form of property and sales tax. Also, in some cases revenue is generated by severance tax on the minerals produced. Energy development brings employment opportunities to the area not only in the energy industry itself, but also in the services required by the new population.

An August 1980 Department of Commerce study states that for the coastal zone areas there are only rate instances that the public costs of correcting socioeconomic effects are not compensated by later increases in public revenue. While this may be true, there are instances where this and the other conditions described above may not exist.

One is if the deficit is not followed by a revenue surplus as in OCS development wher the States and communities are not able to tax the actual energy facility but are limited to taxing onshore support facilites. The same situation could also exist if the revenue generated goes to the State level and is not passed back to the local community being impacted.

There are also cases in the coastal zone where an area has an underutilized infrastructure capacity which may or may not be usuable, has significant unemployment, or is a very large community. For example in the Atlantic region, States such as New Jersey and Massachusetts encourage locating facilities in areas with underutilized infrastructrue capacity. In this case, unless the infrastructure would require upgrading, the effects of increased energy development could probably be absorbed by the area.

Mr. DURENBERGER. This report found that in general, "only (in) rare instances are the public costs of correcting socioeconomic effects not compensated by later increases in public revenue."

Mr. President, I think any prudent observer must conclude that there is a genuine Federal responsibility to help mitigate the impacts of offshore development. I also believe that any objective observer must conclude, after close study, that current funding of the programs designed to address development costs has not been so low as to create serious problems for coastal States. If there is a problem, I pledge my support to strengthen the appropriate programs to see that the job gets done fully.

No one objects, including this Senator, to compensating States for draining of oil and gas from their lands caused directly by Federal drilling activity within the 8(g) zone. That is why we created the 8(g) zone in the first place.

But what we have before us goes way beyond the definition of "fair and equitable." It has nothing to do with equity, fairness, or justice and has everything to do with greed, deception, and a slight of hand. It has nothing to do with reducing the Federal deficit, a goal whose means we in this body debate tirelessly day after day. Rather it robs the Treasury to hand seven coastal States an unearned multibillion-dollar windfall to their State treasuries. And unearned it is.

Mr. President, I will conclude and urge my colleagues to support the Evans/Metzenbaum amendment and make a significant contribution to reducing the deficit.

Let me make two quick points. First, the opponents of this amendment contend the division is equitable on two grounds. First, it is contended that OCS mineral development is the only exception to a longstanding Federal policy of sharing revenue with affected States or sharing receipts from resource development.

I take exception to that argument on two counts. First, although funds are not specifically earmarked for OCS receipts, Congress has in fact recognized that offshore development produces some adverse effect on coastal States, and creates specific programs to deal with that problem.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DURENBERGER. Most of the programs are for the exclusive benefits of coastal States.

Mr. BENTSEN. Mr. President, I ask unanimous consent that I may speak for 2 minutes.

Mr. JOHNSON. Mr. President, I yield 2 minutes to the distinguished Senator from Texas.

Mr. BENTSEN. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I urge my colleagues to reject the pending amendment. If it is adopted, the seven coastal States will have no where to turn but the Federal courts. Rather than resolving the issue once and far all with the legislation reported from the Senate Energy Committee, we will see years on continued litigation on the matter. That result is unfair and unnecessary. I would like commend the Senator from Louisiana [Mr. JOHNSTON] for his outstanding work in resolving seven years of dispute between the Federal Government and the coastal States. His proposal to section 8(g) of the Outer Continental Shelf Lands Act which was passed by the Senate Energy Committee is necessary to end that dispute and settle litigation between the Department of the Interior and the coastal States.

The original section 8(g) required a fair and equitable division of Federal revenues from leases of submerged Federal lands within a 3-mile zone adjacent to coastal States submerged lands. That division of Federal bonus, royalty and other revenues was to be negotiated between the Secretary of the Interior and the Governor of the coastal State. If they could not agree, a Federal district court was to decide what was fair and equitable.

Because the Secretary of the Interior never offered a coastal Governor more than mere compensation for drainage of the State's oil and gas by a Federal lessee, no complete agreement was ever reached with any State. Three States are now in litigation; and unless the amendment adopted by the Energy Committee passes, other coastal States are prepared to follow. That chain of litigation threatens to undermine the entire Federal OCS leasing program at a time when we need to be encouraging as much domestic production as possible. In 1978 the Congress wisely recognized that it takes more than words to meet the goal of energy independence for this country. The oil and gas resources of the OCS are believed by most knowledgeable observers to be an important part of a total domestic resource base which can be developed to insure that our national security is not jeopardized by an unwise and excessive dependence on foreign oil and gas supplies.

The 8(g) solution approved not only by the Senate Energy Committee but also by the House Interior and Merchant Marine Committees specifically defines a fair and equitable division for both past and future lease sales. The solution is a compromise between what the Department of the Interior has offered to give to the States and what the States felt they were entitled to receive.

The compromise represented by the 27 percent figure in the committee proposal is similar to that reached by Judge Parker in the only 8(g) case which has been tried on the merits. Judge Parker awarded Texas the equivalent of 27 percent of all the bonuses from the four sales which were the subject of that suit. The 27-percent figure is also the middle ground between the 16⅔-percent settlement offer made by Secretary Clark after Judge Parker's ruling and the 37½-percent response by the governors.

The current escrow account which consists of revenues from all 8(g) sales held over the last 7 years is to be divided by giving the Federal Government $4.0 billion and by giving the States the shares of bonus revenues set out in the bill as well as 27 percent of royalties. Thus, this provision meets the requirements of budgetary savings required by the budget reconciliation instructions and resolves future disputes as well.

Mr. President, for future lease sales, the Federal Government will receive 73 percent of all bonuses, rents and royalties while 27 percent of those revenues will go to the adjacent coastal

States. Both State and Federal oil and gas will be protected from drainage by unitization or other royalty sharing agreements.

As part of this compromise, the States are surrendering some of their claims. Two Federal district courts have agreed that Federal tax revenue from 8(g) leases is subject to division under certain circumstances. The States have agreed to surrender their claim to that tax revenue. Other pending State claims which have not yet been litigated will also be set aside.

When we compare this settlement with Federal onshore leases, this compromise does not come close to giving the coastal States the same percentage share of mineral revenues which are given to inland States under the Mineral Lands Leasing Act. Those States receive 50 percent of bonuses, rents and royalties. Under some circumstances, for instance, coal leasing, the mineral leasing States realize 90 percent of all royalty income. Even though the coastal States will receive only 27 percent of the section 8(g) revenues, they will have to provide all of the same governmental services that the inland States provide their families and workers—schools, roads, police and fire protection, and environmental reclamation.

Mr. President, I believe that the 27-percent share of Federal revenue for the coastal States cannot be described as too generous. It represents the minimum amount which can be viewed as fair and which can bring 7 years of litigation to an end.

RECOUPMENT OF PRORATED REVENUES

We have seen during the last 7 years, the Department of the Interior either refused to deposit or withdrew revenues which should have been in the section 8(g) escrow account. The recoupment provision in the committee bill simply restores to the States their share of those revenues.

When section 8(g) first became law, the Department of the Interior deposited into escrow all bonus payments from tracts which were either wholly or partially within the 8(g) zone. Interior debated internally whether it should draw its tracts so that all of the acreage would be wholly within the 8(g) zone. Having decided that it would not draw the tracts so precisely, Interior correctly decided that all revenues received for a tract should properly be deposited into escrow.

Beginning in 1981, under pressure from the Office of Management and Budget, Interior began to divert money from the 8(g) escrow account into the miscellaneous receipts account in the Treasury. The means chosen to meet that objective involved those tracts which were partially within and partially beyond the 8(g) zone. Interior began to prorate bonus payments on the basis of the surface acreage of the tract which was entirely within the 8(g) zone. It placed a proportionate share of the bonus payment for a given tract attributable to the number of acres entirely within the 8(g) zone in escrow; the rest was to be deposited directly into miscellaneous receipts.

Mr. President, the Department of the Interior notified my State of its intent to withdraw funds from escrow in accordance with this proration scheme. Texas obtained an injunction from a Federal district court in which Judge Parker directed Interior not to withdraw any funds and to deposit all revenues from future sales in escrow. The Department of the Interior withdrew those revenues anyway. In addition, the Department applied the proration principle to other States and other lease sales as well. Judge Parker's opinion specifically directs all revenues to be deposited so that they can be taken into account in arriving at a fair and equitable division. A Federal court in Louisiana has concurred in this decision.

The Department of the Interior has known from the outset that its practice of prorating revenues was improper. However, the Department of the Interior has used proration as a tool to reduce the amount of money in which the States would be entitled to share. When Judge Parker entered his judgment, he took the entire bonus into account and not just the prorated bonus, reversing Interior's prior actions.

The Department of the Interior has tried to create the impression that virtually all of the acreage of these tracts which are partially within and partially beyond the 8(g) zone actually lies beyond the 8(g) zone. That is simply not true. In fact, for Texas, over half of the acreage of these tracts is within the 8(g) zone.

One point that needs to be made, Mr. President, is that the States do not seek to recover this money from current Federal revenue. The States do not seek to recover this money in a single payment from future 8(g) revenue. The States do not seek to recover this money from non-8(g) sources. Rather, the States have agreed to recover their share of wrongfully withheld revenues at the rate of 10 percent per year from future Federal 8(g) revenues. If the Department of the Interior had properly left these revenues in escrow, the States would receive their fair share this year. In fact, by delaying the receipt until future years, those shares are reduced in their present value. However, we have not sought an additive to prevent the erosion of the present value of the State's share under this payout plan.

Further, recoupment does not provide a windfall to the coastal States as some would argue. It simply provides a mechanism for the States to recover a share of revenues which the Department of the Interior withheld or withdrew from the 8(g) escrow account. Judge Parker told the Department that if it had drawn the tract lines to coincide with the 8(g) zone, this issue would not be a problem. Interior has since followed his advise and new tracts coincide with the 8(g) zone. However, since the Department had the power to draw the tracts and chose to let the tracts overlap, all revenues must be deposited to safeguard against abuse.

ROYALTY INCOME

Mr. President, the State must be permitted to share royalty income in addition to drainage compensation. Current law specifically says that royalties are to be shared. That right is not limited in the statute to drainage. It is in fact possible that the refusal to share at least past royalties with the States would be unconstitutional.

The only revenue source which containues over the life of a producing well is the royalty payment. Consequently, it is the only revenue source which would be available to help States deal with problems which arise from continued offshore activity.

The current law has been construed by two Federal district courts to entitle the States to share in all Federal revenues from these leases. Royalty income is a major revenue source. Under the former nomination process, royalty income on average constituted about one-third of all revenue from a lease. Under the Department of the Interior's new area wide leasing, royalty income has become a much larger share of the total income because bonds receipts have declined so dramatically.

The Department of the Interior and OMB have argued that permitting States to share royalty income will cost the Treasury $4 to $5 billion over the 30-year period. Nothing in the past 7 years of experience in 8(g) support that kind of production. After 7 years, barely $200 million in total 8(g) royalty payments are in escrow. The Congressional Budget Office projects an optimistic $100 million a year in total 8(g) royalty income. The State share of that would only be $27 million a year. Under CBO assumptions, total royalty income from the 8(g) zone over a 30-year period would be only $3 billion and the State share would be $810 million. For OMB and Interior's assertions to be correct, the total royalty income would have to be greater than $16 to $20 billion. That projection is simply not credible.

CONCLUSION

I would hope that my colleagues would reject the pending amendment and let the Energy Committee's legislation settle the entire issue. This will avoid the inevitable recurrence of future disputes between the States and the Federal Government.

Although the Committee's proposal offers the States considerably less than we sought, we feel that it is a fair and equitable resolution to a long standing problem. We believe this legislation will end current and future litigation over the 8(g) issue. By giving the States a small stake in revenues from a small area of the OCS, it will actually spur OCS development and

help us strive for energy self-sufficiency.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, I rise in opposition to this amendment. While I have the greatest respect for my colleagues who have offered this amendment and as a general rule, closely identify with their motivation which is to reduce the budget deficit, I cannot in good conscience support any proposal to fatten the Federal Treasury at the expense of California and other coastal States whose OCS is being exploited to benefit national energy needs.

And that is exactly what this amendment proposes to do. As I understand the proposal before us now, oil and gas royalty revenues from the so-called 8(g) zone would not be shared with the affected coastal State except to the extent that these resources are drawn from State submerged lands.

By providing only that States shall be compensated for oil that is drawn from State lands, this amendment misses entirely one of the primary objectives of the so-called 8(g) program.

That objective is to compensate States for impacts to their environment and infrastructure caused by Federal OCS development.

We are not talking about sharing revenues from all OCS development with affected States, the language in the bill before us today relates only to the 8(g) zone—the 3-mile belt adjacent to the State territorial waters. Onshore impacts from OCS development can be severe, and why States shouldn't be compensated for these impacts is unclear to me. Compensation was clearly contemplated in the 1978 OCS Lands Act, and I am not aware of any developments since then that would compel certain of my colleagues to seek to strike this provision of law.

Indeed, if we are to depart from the principle that States and localities should be compensated for impacts from Federal activities, do we also strike the 25-percent Timber Receipt Sharing Program and the 50-percent Mineral Leasing Revenue Sharing Program? I think not, and I would strongly suspect that there are quite a few of my colleagues who would oppose any such proposal.

Yet, we have before us an amendment that would treat offshore oil and gas revenues differently than timber and mineral leasing revenues. In fact, this amendment sets up a situation where inland States will continue to receive 50 percent of Federal revenues from onshore oil and gas leasing on Federal lands, but coastal States will get no share of offshore revenues except to the extent that these revenues are derived in part from State lands.

This kind of discriminatory treatment is not justified. There is no difference in my mind between sharing onshore oil and gas leasing revenues with a State of origin which is expected to maintain the roads used by hundreds of heavy duty oil trucks servicing oil fields on Federal lands, and Port Hueneme in southern California which is expected to maintain expensive port facilities for the many vessels that service Federal OCS operations in the Santa Barbara channel.

Infrastructure needs do not stop with adequate pier and wharf facilities. Adequate housing, schools, roads, sewer, water, police and fire protection, and traffic systems are required to keep up with a growing OCS industry—and it is growing in the waters of California. At least three new producing platforms off of Santa Barbara County alone are scheduled for completion soon.

If we accept this amendment which will deny these coastal communities their fair share of the public revenues from the OCS operations, onshore businesses that cannot escape the taxing jurisdiction of the State and locality will have to shoulder an unfair tax burden. They are the ones who will have to finance the maintenance of an infrastructure used by the offshore industry located in Federal waters. In effect, this amendment would unfairly require onshore businesses to subsidize Federal OCS operations.

But infrastructure impacts are not the only thing States and localities should be compensated for. Compensation for environmental impacts is equally as important. For California, air quality impacts are one of the biggest concerns. Because the prevailing winds off of California are onshore winds, OCS activity is strongly suspected of aggravating an already serious problem with onshore air quality.

Sharing 8(g) revenues with the State of origin will help to compensate for this kind of environmental impact. These moneys can be put to good use. I am informed, for example, that the south coast air quality management district serving the Los Angeles basin and responsible for implementation of the Clean Air Act could use the 8(g) moneys provided for in the reconciliation bill to subsidize ride sharing programs. In this way, 8(g) moneys can be used to indirectly help mitigate air pollution caused by OCS oil and gas production.

Compensation—not revenue-sharing—is the rationale for for the 8(g) program. If we are to compensate inland States for impacts to their environment and infrastructure caused by Federal activities, so should we compensate coastal States. The argument against this amendment on the grounds that it is inequitable is clear, and I do not see how the amendment's sponsors can possibly refute it.

Mr. President, when I am confronted with the type of amendment that we have before us today, I wonder why some of my colleagues have a difficult time understanding my position in favor of continuing the moratorium on developing certain OCS sections off the California coast. How can I support exploiting California's precious resources when California is expected to pay for this development without being able to reap its fair share of the benefits? Certainly, there are other important issues that have to be resolved in my mind before I can support lifting the existing California OCS moratorium, but the question of compensation has to be one of the most important issues.

Gov. George Deukmejian of California supports the 8(g) language as reported out by the Budget Committee and I ask my colleagues to join me in opposing this amendment or any other proposal to modify this language.

I ask the manager of the bill to yield 2 minutes.

Mr. JOHNSTON. Mr. President, I think I have only 1 minute left. I reserved that for the distinguished chairman of the Energy Committee.

Mr. WILSON. We have no time left?

Mr. JOHNSTON. We have only 1 minute left.

Mr. MURKOWSKI. Mr. President, I support the provisions of S. 1730 that provide for a fair and equitable sharing of offshore oil and gas revenues between the Federal Government and the States.

I am opposed to the amendment currently before the Senate which would significantly modify those provisions.

The Energy Committee provisions of S. 1730 constitute an effort to resolve an issue which has existed since 1978 when Congress amended the Outer Continental Shelf Lands Act. Section 8(g) of those amendments created a 3-mile zone on the Outer Continental Shelf [OCS] immediately adjacent to the States' seaward boundary and provided that revenues generated by Federal oil and gas leases in that zone should be shared in a fair and equitable manner with the States. This zone has become known as the 8(g) zone. The Department of the Interior and the coastal States were unable in the 7 years since 1978 to reach an agreement on what "fair and equitable" meant. The Energy Committee has now defined those terms and established a simple formula for dividing the revenues from the 8(g) zone.

The committee's provision is not a ripoff of the Federal Treasury as the amendments sponsors would have you believe. The provision establishes a formula for sharing which is modest. By giving coastal States only 27 percent of revenues generated by oil and gas leases in a very limited area of the Continental Shelf, it attempts to provide coastal States with a small portion of substantial revenues generated by oil and gas development off their shores.

There are ample reasons why States should share in those revenues. Oil wells in Federal waters drain resources

from State lands. The States should be compensated for that drainage.

Offshore oil and gas exploration and development also impose heavy burdens on coastal States. They must create the infrastructure necessary to support that exploration and development. States mustmeet the increased demand for schools, social services, and other amenities brought about by that activity. The States bear the risk of possible environmental damage from offshore oil production. Finally, the value of Federal oil and gas leases is enhanced by oil and gas exploration carried out in State waters. As an equitable matter, the States deserve a share of the Federal revenues for these contributions.

I want to emphasize again that the Energy Committee formula provides for sharing of 27 percent of the revenues generated by leases falling within a very narrow 3-mile zone of the Outer Continental Shelf.

To put this formula in perspective; States receive 50 percent of all revenues generated by oil, gas, and other mineral leases on all Federal lands within their borders.

It is also useful to put the revenue figures involved in perspective. Since 1954 the Federal Government has collected over $76 billion from all Outer Continental Shelf oil and gas leases. In present cash outlays the States are going to receive less than 2 percent of this total. There is absolutely no reason to believe that this percent of total OCS revenues going to the States under the energy committee proposal in the future will be any larger.

The opponents of the Energy Committee proposal have also inaccurately characterized that proposal as a case of 7 States stealing from the other 43. Only seven States will receive benefits now because Federal oil and gas leases have been issued offshore of only those seven States. It is likely that OCS activity will occur offshore additional States in the future. Those States will receive the modest benefits of this provision. In recognition of this fact, the coastal States organization, representing some 35 coastal States and Territories, has endorsed the Energy Committee action.

Mr. President, I would now like to examine the substance of the amendment being offered. This amendment changes the Energy Committee provision in three ways. First, it requires future rents and bonuses to be prorationed according to the percentage of surface acreage of the lease tract lying in the 8(g) zone before they are divided with States. Second, it elimminates a mechanism for the States to recoup a deficiency in the escrow account holding the 8(g) zone revenues generated since 1978. Third, it permits the Federal Government to retain all future royalties from leases in 8(g) zone instead of sharing those royalties with the coastal States as the 1978 law expressly required.

These changes have serious consequences for coastal States. Each of them needs to be examined individually. However, I believe it is necessary to first address the fundamental premise of the amendment—that the Energy Committee provision is a budget buster and a ripoff.

The argument that this provision is a budget buster is based on a projection that it will cost the Federal Treasury some $4 to $6 billion over the next 30 years. I have also seen some estimates of $6 to $12 billion. This projection is not credible. The past 7 years experience in the 8(g) zone does not support the projection. Only $200 million in royalties has been generated in 8(g) zone since 1978. Furthermore, the Congressional Budget Office estimates that the 8(g) zone will produce only $100 million per year in royalties for the next 30 years, or a total of $3 billion. The States 27 percent share of this total would be only $800 million over 30 years. For the States 27 percent share of royalties to equal $4 to $6 billion, the total 8(g) zone royalties will have to be in the range of $16 to $24 billion. Nothing, including previous Department of the Interior sworn testimony, supports this projection.

Now let me examine the changes made by the amendment currently before us. The supporters of the amendment argue that prorationing of revenues according to surface acreage allows for a fairer division of revenues. This argument has no merit. The surface acreage of lease tracts bears no relationship to the underground oil and gas resources beneath that surface. A division of revenues on this basis is therefore artificial and arbitrary. The Vermillion lease tract in the Gulf of Mexico provides a vivid example of the arbitrary nature of this approach. Less than 10 percent of the surface acreage of that tract lies in 8(g) zone. Yet, all of the oil produced by the entire tract has come from one well located in 8(g) zone portion of the tract. If prorationing applied to this tract, less than 10 percent of the $44 million bonus paid for the right to explore this tract would be subject to the 27/73 percent sharing formula. The Federal Government would receive more than 90 percent of the revenues from this tract off the top and an additional 73 percent of the remainder even though all of the oil came from a well in the 8(g) zone. Such a result defeats the purpose of the original 8(g) and clearly demonstrates the arbitrary nature of surface acreage prorationing.

This amendment would also eliminate the recoupment mechanism of the Energy Committee proposal. The recoupment mechanism is necessary to make up a deficiency in the escrow account set up to hold all revenues generated by leases within the 8(g) zone until the States and the Department of the Interior agreed upon a formula for dividing those revenues. This deficiency is a result of the Department of Interior's unilateral decision to proration deposits made to the account based on the surface acreage of the lease tract falling into the 8(g) zone. There was no basis whatsoever for the policy decision to proration deposits. The 1978 OCS amendments expressly required Interior to escrow all revenues generated by leases in the 8(g) zone pending an agreement on what revenues were to be shared and how they were to be shared. Interior's failure to escrow all of the revenues was a direct violation of the intent of section 8(g).

The situation was further exacerbated by Interior's inconsistent application of its prorationing policy. From 1978 to 1981 it did not prorate. Since 1981 it has prorated. The effect of this policy flip-flop is that some States, including Alaska, had a much greater percentage of 8(g) revenues prorated than other States. The result is an extreme unequal treatment of the States entitled to 8(g) revenues. The recoupment mechanism of the Energy Committee provision corrects this inequality.

The final irony on this issue is that Interior had the authority to draw the lease sale tracts in a manner which would have avoided any need to proration by surface acreage. It intentionally refused to do this.

The amendment also provides that the Secretary of Interior may enter into an agreement with the Governor of the affected coastal State for sharing of the royalties from common potentially hydrocarbon-bearing areas. This constitutes a major change in existing law. The 1978 OCS amendments expressly provided that royalties were to be divided on a fair and equitable basis. This amendment declares that royalties can be shared pursuant to an agreement based on existing law but does not indicate what existing law is intended.

At best the provision is ambiguous and will lead to additional litigation of an issue that has already seen over 7 years of litigation. Presumably the sponsors of the amendment contemplate that agreements for sharing of royalties would reflect actual drainage of oil from fields under State lands. As a practical matter, it is not possible to determine actual drainage until the entire oil field is produced. This may take 50 to 60 years. It will be next to impossible to reach an agreement in absence of definite data. As a consequence, the States will be forced to litigate to achieve any sharing of royalties. Since the Interior is not required to escrow the royalties in the absence of an agreement, a State's successful litigation will be no guarantee of receiving its fair share of those royalties. That State will then have to come to Congress and ask for an appropriation to satisfy its judgment.

The likely outcome under the amendment is that the Interior will interpret the word "may" to mean that reaching an agreement with the State

is purely a discretionary function and will refuse to reach any agreements. Under this scenario the Federal Government will keep all of the royalties from leases in 8(g) zone.

Mr. President, the bottom line here is that sponsors of the amendment have attacked the Energy Committee provision on the basis of preposterous predictions about budget impact. To correct this received ill effect, they have crafted an amendment which goes so far that it deprives coastal States of a significant amount of the benefits which they were expressly granted by Congress in 1978. There is no justification for an amendment in the first instance—and certainly no justification for one as far-reaching in scope as this one.

This is not the first time this issue has been before the Senate. In 1978 Congress mandated that the Federal Government share with the States all revenues from Federal oil and gas leases within 3 miles of States' seaward boundaries. Congress did not finish the job in 1978, however. We merely declared that the sharing should be fair and equitable and left it up to the Secretary of the Interior and Governors to agree on a formula.

Needless to say, no agreement was ever reached. We now have an opportunity to do what should have been done 7 years ago. The Energy Committee formula fits the 1978 mandate of a fair and equitable sharing of revenues from a limited area of Outer Continental Shelf and should be affirmed.

I urge my colleagues to reject the amendment on the floor and support the Energy Committee's proposal.

Mr. STEVENS. Mr. President, I strongly support the Energy and Natural Resources Committee's section 8(g) compromise.

In 1978, Congress amended the Outer Continental Shelf Lands Act to deal with the problem of oil and gas structures that underlie both State submerged lands and Federal OCS lands. It recognized that difficulties in delineating such structures and other factors made application of traditional onshore drainage concepts inappropriate. It therefore decided to escrow all revenues derived from the so-called 8(g) zone—a 3-mile-wide strip of Federal OCS lands bordering State lands—pending a "fair and equitable disposition" of those revenues.

Despite Federal court decisions in their favor, the 8(g) coastal States have not been able to work out an agreement on the 8(g) revenues with the Federal Government. The continuing controversy over these revenues has driven a wedge between the supporters of the Federal OCS leasing program and the Federal Government.

Under the able leadership of Senators MCCLURE and JOHNSTON and my colleague from Alaska, Senator MURKOWSKI, the Energy and Natural Resources Committee has devised a solution to the 8(g) controversy that treats the Federal Government and the 8(g) States fairly. This compromise is fully consistent with the reconciliation instructions set forth in the fiscal year 1986 budget resolution. In fact, it saves $302 million more over the next 3 years than the budget resolution conferees anticipated.

The Energy Committee package distributes 27 percent of currently escrowed and future 8(g) revenues, including royalties to the 8(g) States. It also includes a recoupment provision that compensates the 8(g) States for losses incurred as a result of the Interior Department's belated decision to prorate its escrow deposits to match the percentage of each lease tract's surface area lying within the 8(g) zone.

I shall oppose the amendment offered by Senator EVANS and Senator METZENBAUM for the following reasons:

The amendment eliminates the 27-percent distribution of royalties to the 8(g) States on the ground that royalties should be distributed on the basis of actual drainage. The 1978 amendments to the OCS Lands Act rejected the use of the drainage concept for all 8(g) revenues, including royalties. A retroactive change in the 1978 amendments is grossly unfair to the 8(g) States—particularly in light of the Evans-Metzenbaum amendment's failure to guarantee that the States receive actual drainage royalties.

The Evans-Metzenbaum amendment would endorse the surface prorationing method and eliminate the recoupment provision as part of that endorsement. A little background is in order here. Surface prorationing would never have become an issue if the Interior Department had not made the error of drawing the boundaries of lease tracts so that they included both 8(g) and non-8(g) lands. That error created a difficult revenue allocation problem.

The Evans-Metzenbaum solution to the allocation problem ignores several pertinent facts. The Interior Department has total control over the drawing of lease boundaries. It is responsible for the allocation problem, not the 8(g) States. Furthermore, surface prorationing is not consistent with the 1978 OCS Lands Act amendments. The Interior Department recognized this fact for 3 years before beginning proration in 1981. Finally, in response to a 1984 Federal court order to discontinue use of surface prorationing, the Interior Department is now drawing its lease boundaries so that they do not cross the 8(g) line. The allocation problem thus will not continue in the future.

Proponents of the pending amendment say that surface proration is necessary to prevent the States from reaping a windfall on lease tracts where only a very small fraction of the tract is in the 8(g) zone. That argument fails to address the lease tracts where the 8(g) portion of the tract was the major attraction for bidders. A major revenue allocation problem does exist, but it by no means cuts only in favor of the Federal Government. Surface prorationing would give the entire benefit of the doubt to the Federal Government. That is wrong. The Federal Government created the allocation problem in the first place.

The savings estimates claimed by proponents of the Evans-Metzenbaum amendment are grossly exaggerated. Just as importantly, they fail to take into account the impact of the amendment on the Federal OCS leasing program. In my opinion, adoption of the amendment would create such bitterness among the coastal States that the continuation of the current Federal leasing program would be jeopardized.

Rather than saving money, the amendment will cost the Federal Government billions of dollars in forgone OCS lease bonuses, rentals, and royalties. It saddens me that the Interior Department and the Office of Management and Budget refuse to acknowledge that fact and instead are doing their best to alienate congressional supporters of the Federal OCS Leasing Program. In my opionion, they have squandered an historic opportunity to regain the leadership on OCS leasing policy.

Mr. President, supporters of the Evans-Metzenbaum amendment assert that it would fairly distribute the 8(g) revenues. This assertion does not bear close scrutiny. The first principle of fairness is that promises should be kept. The Evans-Metzenbaum amendment reneges on promises made to the coastal States in 1978 without significantly aiding our efforts to curb Federal deficts. Furthermore, it rewards the Federal Govenment for its poor management of the 8(g) program, fails to provide for a fair and equitable distribution of the 8(g) revenues, and jeopardizes the stability of the Federal OCS Leasing Program.

I urge my colleagues' rejection of the pending amendment in favor of the Energy Committee compromise, which settles the 8(g) controversy in a manner that is fair to both the Federal Government and the 8(g) States.

Mr. BRADLEY. Mr. President, I rise in support of the amendment offered by the distinguished Senators from Washington and Ohio.

There are many reasons why the Senate should not support the language contained within the Energy Committee's budget reconciliation recommendations.

Revenues derived from Outer Continental Shelf leases are second only to the income tax as a source of income to the Federal Treasury. How to share these revenues is a decision which demands careful thought and deliberation. Instead, the committee held one hastily convened hearing on this matter and that hearing was convened only after an attempt was made to adopt the language during the reconciliation markup with no prior hearing. To ask all Members of the Senate

to decide how to apportion the second largest source of revenues to the Treasury under the stringent rules of reconciliation after all time for debate has been exhausted, is clearly poor public policy.

In addition to the procedural reasons for opposing the Energy Committee amendment there are additional substantive reasons to object to this provision.

The 8(g) revenue dispute has a long history. Initially, the States and Federal governmnet disputed who had the rights to revenues derived from any offshore lease.

A compromise was reached which granted the States total control over the area within 3 miles of their shore. This control includes the rights to all revenues generated from any leases in that 3-mile territory. The States of Florida and Texas were granted 3 leagues. This compromise was accepted by the States until disputes arose concerning Federal leases adjacent to the State waters. To further accomodate the coastal States, the Federal Government established an additional 3-mile zone, designated the 8(g) zone. Revenues generated from leases in these tracts were to be shared in a "fair and equitable" fashion, but the parties have been unable to agree on what is "fair and equitable." We have before us an attempt to settle the question and I would like my colleagues to decide for themselves if the solution meets the test of fairness and equity.

I ask you Mr. President, is it fair and equitable to grant coastal States revenues generated not only beyond States waters but beyond the 8(g) zone itself?

Sound geologic data on existing leases shows the drainage from State lands to be less than 10 percent. There is no reason to believe that future leases will be significantly different. Is it fair and equitable to gurarantee coastal States 27 percent of the royalties, that is future revenues, generated by these same tracts.

Is it fair and equitable to give to coastal States an estimated $4 to $6 billion that would otherwise be returned to the Federal Treasury, and therefore the American taxpayer, from lands wholly in Federal waters?

Mr. President, my home State of New Jersey is a coastal State. We do not at this time directly benefit from the largesse exhibited by the Energy Committee but we may in the future. Nevertheless it is patently unfair for us to expect the rest of our Nation's taxpaying citizens to support the proposal that is before us. New Jersey taxpayers, even as residents of a coastal State stand to pay the equivalent of a $163 million tax burden over the next 30 years as a result of the royalty formula prescribed in this bill. Only five coastal States derive substantial benefit from this unfair apportionment of revenues. No wonder the New York Times, which has special concerns for coastal States, denounced this provision in its October 8 editorial as an unwarranted giveaway. I ask unanimous consent that the text of that editorial be printed in full in the RECORD.

Mr. President, some argue that the Energy Committee language is fair, citing the fact that revenues generated by Federal minerals leasing onshore are divided equally between the States and Federal Government. I find this argument specious. There is a big difference between a State's claim to revenues on land within it's borders and a claim to revenues derived from land that might as well be in an adjacent State.

Mr. President, the issues are quite clear. First, coastal States were given 3 miles of territorial waters, then they were permitted to share revenues from an additional 3 miles of Federal waters and now they want to share revenues from land they conceded long ago was under Federal jurisdiction. There seems no end to this unless we act today.

In conclusion, Mr. President, I join with the Senators from Ohio and Washington in order to restore fairness to all Americans and to restore fiscal responsibility to this legislation.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DRILLING FOR OIL MONEY IN CONGRESS

Congress: Please reduce the deficit by raising it. That's the solemn urging of a handful of states with offshore oil wells. They greedily propose an accounting trick that would credit the Treasury with $4 billion it has already received in return for a commitment to give away as much as $6 billion. They should be quickly rebuffed by the House.

In 1953 Congress assigned to the states all the royalties earned from oil and gas production within three miles of the coast. Then came complaints that producers were draining oil and gas from reservoirs beneath the state-Federal boundary. So in 1978 Congress ceated another three-mile band as a buffer, the royalties to be held in escrow till a distribution formula could be devised.

About $6 billion has now accumulated in this fund. According to the Interior Department, about 4 percent of that, at most represents earnings from state properties. But as long as the fair division is in dispute, the Federal share cannot legally be counted as belonging to Washington.

This year, in their haste to raise revenue to narrow the budget deficit, the Administration and Senate and House budget committees agreed to give the states involved a whopping 27 percent of the $6 billion—about $1.6 billion, instead of $240 million. That would allow applying about $4.4 billion against the Federal deficit.

But only on paper. Since the money is already in the Treasury, the transaction would not reduce private purchasing power or Federal borrowing needs by even a nickel. The only money to change hands is the $1.6 billion the Treasury would have to hand over to the states. That would actually increase Government spending—precisely the opposite of the advertised effect.

There is apparently no hope of reversing the initial deal. Dumb as it is, Congress bought it and that would have been the end of the story—but for the exceptional greed of the oil-producing states. They persuaded the House Interior Committee and the Senate Energy Committee to sweeten the deal further by adding $560 million more to the promised $1.6 billion, and obligating the Treasury to pay them 27 percent of all future royalties from the buffer zone. According to Interior, the total cost to the Treasury would exceed $6 billion.

Democrats Morris Udall of Arizona and Philip Sharp of Indiana are asking the House to limit the loss to the original $1.6 billion. A sense of decency should be their strongest ally against giving away any more.

Mr. GLENN. Mr. President, I rise in opposition to the portion of the budget reconciliation bill which allocates Federal revenue from the Outer Continental Shelf [OCS] oil and gas leasing activities.

According to the Department of Interior, the reconciliation provisions would cost over $4 billion over the next 30 years. Moreover, this money drain would go only to seven States—Louisiana, Texas, Florida, Alaska, California, Alabama, and Mississippi. Estimates show, for example, Ohioans would have an additional tax burden of roughly $180 million in the next 30 years to compensate for this windfall Treasury loss. This "raid" on the American taxpayer is especially upsetting because it is contained in a bill designed to reduce the Federal deficit.

The committee language goes far beyond the reconciliation instructions Congress adopted earlier this year in the budget resolution. Only one perfunctory hearing has been held on this important matter.

In 1953, Congress granted the States full rights and ownership of waters within 3 miles of their shoreline. The Federal Government retained jurisdiction and ownership over all water beyond the 3-mile territorial boundary.

Section 8(g) of the 1978 Outer Continental Shelf Lands Act Amendments established certain leasing policies regarding the first 3 miles of Federal OCS water. This provision was designed to protect States against drainage of valuable resources from within their coastal waters that could result from drilling activity in the Federal zone.

Specifically, section 8(g) provided for a "fair and equitable" sharing of revenues produced from Federal leases in the 3-mile zone from oil and gas pools common to both Federal and State lands and contemplated an agreement between the affected States and the Federal Government as to what would constitute a "fair and equitable" distribution. Failing an agreement, the section required that 8(g) revenues be deposited in an interest-bearing escrow account until the matter is settled. More than $5.8 billion is now in the account.

The budget resolution assumed enactment of legislation to settle the 8(g) dispute by giving States a 27 percent share of the bonuses and rents that have been generated in the 8(g) area. Such an amendment would bring $4.3 billion into the U.S. Treasury by

freeing up 73 percent of the escrowed 8(g) funds. The balance—$1.5 billion—would be distributed to the affected States.

Unfortunately, the action taken by the committee violated the intent and spirit of these instructions.

First, it provides for the distribution of past and future royalties to the States, in addition to bonuses and rents. While I have no objection to proper compensation to States for oil and gas drainage from their lands caused by Federal activity in the 8(g) zone, I cannot support an entitlement for all royalties, including those resulting entirely from pools in Federal waters.

One must also distinguish between royalties and rents and bonuses. Royalties are not received until the well is produced. Hence, geological data is available at that time to determine if a common pool is shared with the States. In such a case, royalty revenues should be shared. But where there is no common pool, I feel the States have no sound basis to stake a claim. In fact, an objective observer could argue that the Department of the Interior's proposed settlement to share bonuses and rents even where there is no common pool is overly-generous in itself.

Another concern I have is the committee's provision giving States claims on revenues coming from tracts lying partly beyond the 8(g) zone.

The folly of this action can be shown by some specific examples raised in conjunction with this debate. One 5,760 acre tract leased offshore Florida contains 477 acres within the 8(g) zone—8 percent of the total. Offshore Texas, there is a tract with only 17 out of 5,760 acres, or 0.2 percent, within the 8(g) zone. But under the committee's approach, the Federal Government would be required to consider 100 percent of the bonus, rent, and royalty revenue from these tracts no matter how small the percentage of the tract is within the zone.

I fully support States sharing revenues from tracts straddling the 8(g) zone to the extent that production from these tracts drains resources from State waters. However, when there is no effect on State resources, there is no reasonable basis for sharing revenue with the States.

In conclusion, I believe the committee's language gives some select States a windfall at the expense of all American taxpayers. This clearly is an unacceptable ripoff and drain of Treasury resources. For these reasons, I support the efforts to amend this bill to conform with the requirements of the budget resolution.

OPPOSITION TO COMMITTEE APPROVED 8(G) FUNDS SHARING RAID ON TREASURY BY SOUTHERN OIL STATES

Mr. KASTEN. Mr. Chairman, I rise to consponsor the amendment introduced by my colleague Senator EVANS in opposition to the committee adopted language on 8(g) OCS lands.

The committee language can be viewed as nothing other than an out-and-out raid on the Federal Treasury by a few coastal oil producing States. The committee amendment, which provides that a major portion of the revenues from oil and gas produced in Federal waters will be given to a limited number of States, is just plain wrong.

Why should revenues produced from resources outside of a State's territorial waters be given to that State? Those resources belong to the entire Nation. A privileged few should not rob the rest of the Nation of this source of revenue.

It is now estimated that the language in this bill will cost the Federal Government at least $7.5 billion in lost revenues.

This would impact directly on the State of Wisconsin. Earlier estimates suggested that the committee passed provision to give away these Federal revenues would cost the taxpayers of my home State $77 million. With the revised estimates of the cost of the committee amendment, I would now point out that the 8(g) provision would cost the taxpayers of my State over $150 million.

I urge my colleagues to join with me in support of the amendment to delete the 8(g) provisions contained in this bill. Anything less than the deletion of this provision is an open raid on the Federal Treasury.

We cannot stand by and let that happen.

Mr. CHAFEE. Mr. President, I am pleased to support the Outer Continental Shelf [OCS] revenue amendment to the budget reconciliation bill introduced by Senators EVANS and METZENBAUM. This amendment will modify a provision in the bill to prevent a windfall revenue gain for seven States at the expense of 43 other States.

Section 8(g) of the OCS Lands Act provides for distribution of OCS revenue from the first 3 miles of Federal OCS waters to affected States. This section was intended to protect States from the drainage of oil and gas underlying State waters by a Federal lessee who is drilling in neighboring Federal waters. In essence, States would be compensated for any dilution of their resources. The Federal and affected State governments have never come to an agreement as to what constitutes fair and equitable distribution.

The distribution of these funds, as provided for in the budget reconciliation bill, goes far beyond the intent of the OCS Lands Act. The law only requires the sharing of revenues when there is an oil or gas pool common to both Federal and State submerged lands. The Department of the Interior estimates that only 1 to 4 percent of the oil and gas produced from the 8(g) zone comes from within the State's offshore boundaries which extends 3 miles from their coastline.

Based on current law, the reconciliation bill provides for an overly generous distribution of revenue to affected coastal states. Under a strict interpretation of drainage only, the States would receive little or no distribution from the current 8(g) account and approximately $100 million over the next 30 years. In comparison, the reconciliation bill will pay coastal States $1.5 billion immediately and over $4 billion in the next 30 years.

The Energy Committee has provided for the distribution of 27 percent of all accrued rents, bonuses and interest payments from the 8(g) zone. In addition, 27 percent of royalties would also be shared with affected States. This provision alone is expected to reduce Federal revenues by $4 billion over the next 30 years. Moreover, this measure provides for sharing revenues from tracts beyond the 3-mile 8(g) zone, reducing Federal revenues by another $500 million.

Under this distribution plan, there is no attempt to base the distribution on the impact of Federal leases on the States resources. Thus, States will share bonuses, rents and royalties where there is no common pool. And, while these coastal States are benefiting from the plan, 43 other States will have to bear the tax burden. For example, if sharing future royalty revenues will reduce Federal Treasury receipts by $4 billion, Rhode Island's tax burden would correspondingly increase by $16 million over the next 30 years. This is certainly not very fair and equitable.

The proposed amendment represents an effort to be fair to the affected States and responsible to the Federal Government and the American taxpayer. This amendment will distribute 27 percent of rent, bonus, and interest payments to the affected States. States, however, would not be allowed to recoup revenues from tracts outside of the 8(g) zone. In addition, the coastal State's share of royalty revenues would be based on drainage, estimated between 1 and 4 percent. Thus, royalty revenue would be shared only to the extent that the Federal lease actually impacts State resources. States should not be entitled to royalty revenue unless the Federal lease activity actually affects State resources.

This proposed amendment follows the intent of section 8(g) of the OCS Lands Act. Section 8(g) was not designed to be a general revenue sharing provision but rather was meant to address the problem of drainage. This amendment provides more than adequate compensation for drainage without being excessive.

I urge my colleagues to join me in the support of this measure.

Mr. LEVIN. Mr. President, at the heart of this issue is what constitutes a fair and equitable distribution of revenue from leases within the federally owned 8(g) zone. Congress in the 1978 Outer Continental Shelf Lands Act

amendments did not specify what constituted fair and equitable. The process of determining what is fair and equitable is difficult. Judge Parker in Texas versus Secretary of Interior states that:

The Court is immersed, literally for months, in a swirling morass of petroleum engineering, geology, economics, history and statistics superimposed over principles of equity.

Judge Parker found that the State was entitled to some of the revenue received by the Federal Government in the 8(g) zone. He determined that the State and Federal Governments should divide the bonus enhancement on a 50-50 basis. Bonus enhancement is the extra bonus received by the Federal Government based on information obtained from drilling tests and studies which occur in the State-owned lands, which are generally the first 3 miles off the coast. Judge Parker also acknowledged that the State is entitled to part of the royalties received by the Federal Government for drilling on Federal lands when that drilling hits a common pool—a pool partially within the 3-mile State-owned lands and partially in the 8(g) lands—the Federal drilling would result in drainage from the State-owned portion of the pool. What is critical, however, is that Judge Parker was unable to apportion equitably the royalties because he could not determine the amount of drainage. He wrote that:

It was simply unrealistic to expect a District Court to find a single individual, willikng to serve as a master, who was sufficiently well versed in economics, petroleum, engineering, geology and statistics.

It may be unrealistic to expect a court to do that but it is not unrealistic for the Congress to do that.

The National Academy of Sciences should be asked to enlarge the current study they are engaged in, due next April, entitled "Study of Offshore Oil and Gas Resource Estimation Methodology." If they are unable to provide any useful information to make a logical apportionment, we can then decide if we want to act in the dark. But until we are convinced that that is true, I see no reason to apportion these revenues based on a totally arbitrary formula.

We simply don't know whether the 73 to 27 percent formula is fair. It apparently is an extrapolation from, and relates back to a 50-50 apportionment of bonus enhancement in the opinion by Judge Parker, which opinion specifically states the judge is unable to reach any conclusion based on the record in front of him relative to a fair and equitable apportionment of the royalties.

The Evans-Metzenbaum approach is aimed at determining royalties based on actual drainage which is at least a logical goal. Many experts in the field say it is possible to determine actual drainage and it is done all the time. Better to attempt to do that, at least, than to adopt an arbitrary 73 to 27 percent Federal-State apportionment formula.

I do not know whether the Federal Government will be ahead $4 to $6 billion or not if we adopt the Evans-Metzenbaum amendment. I do know that the process is likely to be a fairer one. If we seek to fix an apportionment formula in advance of royalties being received, we then should obtain the very best information that we can from the economists, petroleum engineers, geologists, and statisticians. We just haven't done that yet.

Mr. CRANSTON. Mr. President, I strongly oppose the amendment of the Senator from Washington [Mr. EVANS], and others, which is premised on a serious misunderstanding.

First, let us understand what the "8(g) zone" is. Coastal States have title to the submerged lands within 3 nautical miles of their shore, including mineral rights. Where there is oil and gas present in these State waters, it belongs to the State.

The OCS Lands Act Amendments of 1978 included section 7—covering certain Alaska areas—and section 8(g) requiring escrow of Federal receipts from bonuses, rents, royalties, and interest thereon attributable to Federal OCS leasing within the 3-mile zone adjacent to State water, subject to distribution by settlement between the disputants or by a fair and equitable disposition by a Federal district court.

Second, there is an outstanding legal dispute between the Federal Government and seven States—Texas, Louisiana, Alabama, Mississippi, Florida, California, and Alaska—redisposition of money from bonuses, rents, and royalties—plus accrued interest—paid to the United States by oil companies, plus any future royalties, for leasing the 3-mile zone of tracts in Federal waters adjacent to these State waters.

One basis for the States claim is that oil extracted in this zone presumably drains from a pool underlying both State and Federal undersea land, and no one can tell from which side of the line it comes. Federal extraction thus may deplete State mineral value.

Third, oil activity in State water may enhance bonuses received by the Federal Government under Federal leasing programs by indicating to potential bidders the presence of oil in the adjacent Federal zone.

Finally, Federal offshore development in this nearshore zone directly impacts onshore interests of the State. For example, nearshore Federal leasing off Ventura County in the south coast air quality management district—a Federal nonattainment area under the Clean Air Act—will, under Federal law, reduce or prevent potential onshore development by increasing air pollution.

I know that the distinguished junior Senator from Louisiana [Mr. JOHNSTON] with whom I join in opposing this amendment, has not always agreed with me on the degree of this impact. I'm hoping that our alliance today, to protect the rights of our respective States with respect to the impacts of Federal offshore leasing will continue on other issues affecting the Federal Offshore Leasing Program and its relationship with sovereign States.

No settlement has been reached. The total in escrow reached $6.787 billion, as of March 31, 1985. Some litigation has been undertaken. In February 1984, a U.S. district court in Texas held that a fair and equitable disposition would include 50 percent of the bonus enhancement of nine Federal leases, or about 27 percent of bonuses on leased blocks wholly or partially within the 8(g) zone. Interior appealed.

A second U.S. district court in Louisiana held that drainage is not the sole criteria, that taxes are another potential criterion.

Next, then Interior Secretary Clark proposed to Alabama, Mississippi, Alaska, California, and Florida—but not to Louisiana and Texas, which had litigation pending—16⅔ percent of the bonuses and rents in escrow, less a proration offset. He also proposed to split royalties retrospectively, but not prospectively, only in areas of actual drainage, and under the terms of separately negotiated royalty sharing agreements.

The States rejected the offer and counterproposed initially a 50-50 split, but later a 37½-percent share to the States of the accrued bonuses, rents, and royalties plus interest with no proration offset.

The conference agreement on Senate Concurrent Resolution 32—the first budget resolution for fiscal year 1986—assumed that legislation would be adopted to settle the 8(g) dispute, giving the States 27 percent of the accrued bonuses, rents, royalties, and interest thereon.

The language in the present reconciliation bill is consistent with the first budget resolution, and provides for the reasonable and moderate compromise solution to this legal dispute.

The authors of the amendment before us call this a raid on the Federal Treasury, ignoring the fact that what this will accomplish is the settlement of a legal dispute and the proportional distribution of a fund set aside because the ownership of the dollars in the account was in dispute—and that there is no scientific basis for determining the exact amount to which either side is entitled, and that what the reconciliation bill does is split the difference between the parties.

The sponsors of this amendment think there is a rational solution, but they are badly misinformed.

They suggest that if 25 percent of a tract is in the 8(g) zone, 25 percent of the bonuses, rents, and royalties subject to drainage should be placed in the revenue sharing pool.

To accomplish this kind of case-by-case determination would require extensive exploratory drilling, engineering analysis, and endless legal proceedings at inordinate cost merely to arrive at an uncertain result.

The problem is that the exact location of pools of oil do not conform with the arbitrarily defined tract boundaries. Even if the exact conformity of a subsea pool is known, which it almost never is, the quantity of oil in any one portion of the pool is not known.

Moreover, this proposal ignores the finding of one Federal court that drainage is not the sole basis for a legitimate State claim of impact from Federal leasing.

Thus, the proposal for proportional distribution based on tract lines which is the premise of the pending amendment is no more nor less arbitrary than the proposal to settle this dispute which is contained in the bill, but it is more one-sided, more unfair, and less in conformity with the budget resolution.

What it does is represent the position of one side of this legal dispute—a side which lost twice in Federal court—while the language currently in the reconciliation bill represents a compromise solution, one which is far short of the position of the aggrieved States.

I urge that my colleagues reject this badly conceived amendment.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask the coauthor of the amendment to yield me 3 minutes.

Mr. EVANS. Mr. President, how much time is remaining?

The PRESIDING OFFICER. One minute is remaining on both sides.

Mr. METZENBAUM. Mr. President, the distinguished Senator from Washington only had 5 minutes, and he took an additional minute, and the Senator from Minnesota had 1 minute. I do not understand the computation of time.

Mr. EVANS. How did we get to where we are?

The PRESIDING OFFICER. The Senators have used their time. There was some delay in trying to interrupt them and telling them they could use their time. I guess that is how we got to the 1 minute left. The Senator has gone over his time, and the interruptions were delays.

Mr. METZENBAUM. When you have interruptions and delays, is that charged against the time? Our interruption had to do with the colloquy of the manager, the Senator from Louisiana, I do not see how that can be charged against the Senator from Washington.

The PRESIDING OFFICER. His time is also being charged, and they have always been charged when they are trying to interrupt. The time keeps rolling.

Mr. METZENBAUM. Mr. President, if I may use 1 minute.

Mr. EVANS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. How much time remains on our side?

The PRESIDING OFFICER. One minute on each side.

Mr. EVANS. Mr. President, I yield the remainder of my time to my colleague from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this amendment will save the American taxpayers $7 billion. The President has indicated he will veto the bill if this amendment is included.

The issue boils down to a simple one of seven coastal States that would receive an unearned and unjustified windfall at the expense of the taxpayers in 43 other States. If you support this giveaway, the matter as it is in the bill, you will contribute to the plight of businesses and jobs moving from 43 States to these coastal areas which will use the money to keep the taxes low to build up their schools and services.

As a matter of fact, the principal author of Gramm-Rudman tells us to balance the budget but today he urges us to do it on the backs of the people of 43 other States. I do not quarrel with their receiving $1.5 billion. That much we agree to. But our amendment is only directed at that extra $7 billion.

Members from the coastal States are trying to help their constituents. But the rest of us have to approach the issue differently. We must be fair to the coastal States but it is equally important to be fair to the rest of the country.

I urge passage of the Evans-Metzenbaum amendment.

Mr. JOHNSTON. Mr. President, I rise in opposition to the amendment offered by Senator EVANS and Senator METZENBAUM.

The Committee on Energy and Natural Resources reported on September 26 legislation pursuant to its fiscal year 1986 reconciliation instructions which settles the legal dispute between the Federal Government and several coastal States arising under section 8(g) of the Outer Continental Shelf Lands Act. Those instructions explicitly assumed that we would "give a 27-percent share of bonuses and rents now held in escrow in connection with oil and gas leasing on the Outer Continental Shelf."

On September 17, 1985, I introduced S. 1653, the Outer Continental Shelf Lands Act Amendments of 1985, cosponsored by Senator MURKOWSKI. This bill sought to establish a comprehensive solution to the issue of how the Federal revenues from all Federal OCS leases, past and future, within 3 miles of State waters should be apportioned between the States and the Federal Government so as to create a fair and equitable disposition of these revenues. Identical language was introduced on the same day in the House by Mr. BREAUX and Mr. HUCKABY.

This language was considered in committee and a number of changes were made to improve the bill. In considering that language the Senators who offered the amendment before us now offer similar amendments which were defeated one by one.

The language adopted by the committee is remarkable in several respects. First, it is consistent with the reconciliation instructions. Second, it saves approximately $300 million more during the period fiscal years 1986-88 than the 8(g) provision which the budget conferees assumed would be adopted.

Third, it is a comprehensive solution to the issue of how to apportion the revenues received as a result of passage of the 1978 amendments from all the tracts which lie wholly or partially within 3 nautical miles of the State waters. Further, it resolves the question of how to apportion future revenues from leases wholly or partially in the 8(g) zone, regardless of whether those leases were issued before or after passage of the 1978 amendments. The administration, who apparently opposes the language reported by the committee, agrees that a comprehensive legislative solution is necessary.

Fourth, this legislative solution is consistent with a Federal district court decision in Texas which awarded Texas 27 percent of bonuses. I hesitate to make too much of this point. Opponents of our reported language delight in saying that the two Federal district courts did not rule precisely the way our bill is written. If they had, the bill would probably be unnecessary. Both those courts agreed to examine the totality of circumstances surrounding the leases in question. A judicial solution is likely to be lengthy and nonuniform and consist of a case-by-case, lease-by-lease resolution of the issues. That has certainly been the case so far. That is why a legislative solution is called for here.

Those courts did, however, reject the underlying basis of the amendment before us with respect to royalties. Both those courts agreed that drainage of State lands was not the only criterion of a "fair and equitable" disposition of revenues.

Fifth, the committee's reported langauge represents a fair and equitable solution. I would note that the onshore States containing Federal lands receive 50 percent of all the Federal mineral revenues from all those Feder-

al lands. Moreover, another 40 percent of those revenues are paid indirectly to onshore States through the special reclamation fund.

Mr. President, I have recently read correspondence from administration officials who confidently assert that the Congress enacted section 8(g) of the OCS Lands Act amendments for the sole purpose of compensating the States for drainage of oil from State lands. I would invite anyone to examine the tortured path of that legislation through the Congress to see if so simple and clear an intent is evident in the legislative history. The language of section 8(g) was reported by the Committee on Energy and Natural Resources. I was there when the committee considered that language.

I am not going to debate these administration officials over the congressional intent of the 8(g) provision. That is a function of the courts and two courts have explicitly rejected the notion that they are limited to a single factor; namely, the drainage of oil and gas from beneath State lands, in determining a fair and equitable disposition of these revenues. What really matters here is not what Congress intended to do in 1978, but what we ought to be accomplishing in this legislation in 1985 in settling these issues which have bitterly divided the coastal States and the Federal Government.

Let me digress somewhat and discuss how we came to have an 8(g) provision in current law and how the committee came to adopt the language they reported. In passing the OCS Lands Act Amendments of 1978 [OCSLAA], Congress sought to increase mechanisms for State participation in the leasing process in order to balance Federal-State interests and thereby reduce the existing level of disharmony. One particular area of dispute foreseen by Congress was that of jurisdictional disputes over lands adjoining and underlying the Federal-State boundary. Section 8(g) of the OCSLAA is designed to promote an orderly leasing, and an equitable sharing, of the revenues from the Federal lands within a 3-mile strip on the Federal side of the Federal-State seaward boundary.

To this end, 8(g) provides that at the time the Secretary solicits nominations for lease bids on lands within the 3-mile zone, he must provide the Governor of the affected State with all relevant geographical, geological, and ecological data in his possession. He must then offer the Governor an opportunity to enter into an agreement regarding disposition of "revenues" generated by the Federal leasing of tracts in the 8(g) zone. If within 90 days an agreement is not reached on the sharing of revenues, the Secretary may proceed with the sale. However, he must deposit into a separate Treasury account "all bonuses, royalties, and other revenues" attributable to common pools underlying the Federal and State waters. Thereafter, if the Secretary and Governor are still unable to agree on the proper distribution of lease revenue, they shall be apportioned on a "fair and equitable" basis "as a Federal district court of the United States determines."

To date, Federal lease sales involving 8(g) lands have taken place off the coasts of seven States, and in all but one instance, no agreement for apportioning the revenues has been reached. In each instance, the Secretary has offered to divide the revenues based solely on drainage. As of March 31, 1985, the 8(g) account contained some $5.8 billion. Originally, the States insisted on 50 percent of the 8(g) revenues. On August 8, 1984, then-Secretary Clark offered the States 16⅔ percent of bonuses and rents. On April 15, 1985, six Governors counter offered asking for 37½ percent of bonuses, rents, royalties, and taxes.

In an effort to resolve this longstanding dispute and in an effort to generate a budget saving for the Federal Government, the budget conference agreement proposed a settlement of this account. Our reconciliation instruction mandated that we save the Federal Government $4 billion in Function 950; and in so doing:

Assumes that Congress will enact legislation giving States a 27 percent share of bonuses and rents now held in escrow in connection with oil and gas leasing on the Outer Continental Shelf.

The House Budget Committee, which originally proposed the settlement later agreed to by the administration, assumed that the 8(g) escrow account would contain $5.8 billion which would be subject to division. Of this amount, $4 billion would go to the Federal Government, and $1.6 billion would go to the States. These amounts were based on the 27-73 State-Federal split. The remaining $200 million represents the receipts for royalties, which were not a part of the House budget proposal. It is to this agreement which the administration "agreed" via David Stockman's letter of June 20, 1985.

Shortly thereafter, the Department of the Interior published new figures for the account in which they asserted that it contained only $5.1 billion. These numbers represented a restructuring of the account and resulted in a revenue loss to the States of some $200 million.

The Department of the Interior circulated its draft bill which purported to formalize their new numbers. In addition, the bill provided, among other things:

First. Twenty-seven percent of all future bonuses and rents from the 8(g) zone would accrue to the States regardless of whether those revenues could be attributed to a common pool of petroleum underlying the Federal and State waters.

Second. That all of the moneys in the existing 8(g) account which were attributable to royalties would accrue to the Government. These included moneys that were owed to the States to compensate them from drainage from beneath their lands.

Third. That all future royalties would accrue to the Federal Government, less those funds necessary to compensate for drainage.

No one has ever introduced this bill in either House of Congress.

The legislation reported by the Senate Committee on Energy and Natural Resources provides as follows:

First. That the House Budget Committee numbers are chosen for division of the existing account as to bonuses and rents. It was felt that this was the deal the administration had agreed to, and that its subsequent attempt to restructure the account was unwarranted. Future bonuses and rents from any leases whenever executed lying wholly or partially within 3 nautical miles of the State's waters will be shared on the same 27-73 percent division as are escrowed bonuses and rents.

Second. That 27 percent of the existing moneys attributable to royalties will be apportioned to the States. The statute explicitly includes royalties among the funds subject to a "fair and equitable sharing."

Third. Future royalties from any leases, whether executed before or after the 1978 amendments, and which lie wholly or partially within 3 nautical miles of the State's waters, will be shared on the same 27-73 percent State-Federal basis as future bonuses and rents. There have been differences of opinion between the Department of the Interior and the States on these issues. This measure makes resolution of these issues clear, specifically referencing the sharing of revenues from "any" lease not just those issued after 1978, and regardless of whether that lease is "wholly or partially" within the 8(g) zone.

Fourth. That the States would be entitled to "recoup" from future revenues their portion of those monies which should have been included in the account but which were not. Ten percent of future revenues are designated for recoupment. This has been necessitated because of changes in the escrow account which then-Secretary Watt sought to unilaterally impose. Let me elaborate on this point.

Prior to 1981, all revenues from any lease were escrowed even if a portion of the lease fell outside the 8(g) zone. A 1979 Solicitor's opinion on the matter endorses the concept of placing all revenues in escrow, and makes no mention of prorationing such leases on a surface acreage basis. In 1981, Secretary Watt changed this practice. He began prorationing leases not only for new lease sales, but also retroactively. He continued this practice until he was enjoined by a Federal court:

The Court hereby extends, until further Order by this Court, that portion of the Order requiring the Secretary to deposit in a separate Treasury account *all* lease revenue regardless of the surface acreage formula usually applied by the Secretary." *Texas*

vs. Jim Watt, Order, December 23, 1983. (emphasis original)

Indeed, in his subsequent opinion in the same case, Judge Parker noted that several tracts were partially within and partially without the 8(g) zone:

The Court has included this fact in its deliberations when weighing the totality of circumstances regarding a *fair and equitable division* of the 8(g) lease revenue. For future lease sales involving such tracts, the Secretary should deposit in the escrow account *all* revenue attributable to such tracts because in the absence of an agreement between the Secretary and Governor the determination of what percentage of revenue is attributable to the 8(g) portion of a particular tract is a finding of fact appropriately made by this Court. *Texas vs. Interior*, Opinion, February 15, 1984. (emphasis original)

Thus, nonprorationing and, therefore, recoupment is consistent with the Department of the Interior's own accounting practices prior to Jim Watt. The only court case to ever treat the issue recognized that all revenues should be escrowed.

The Department of the Interior had total control over the drawing of lease lines and could have avoided this problem had it chosen to do so. Indeed, it now refrains from leasing areas which straddle the 8(g) boundary and has thereby eliminated this as a problem for future leases.

In conclusion, the committee legislation settles the entire issue, and thus avoids the inevitable recurrence of future disputes over future 8(g) revenues, an objective which the administration supports. The comprehensive settlement reported by the committee not only meets the reconciliation assumptions, it saves the Federal Government, according to CBO, $302 million more over the period fiscal year 1986-88 than the partial 8(g) provision which the budget conferees had assumed would be enacted.

Although this legislation offers the States considerably less than they sought, we feel it is a fair and equitable resolution. We believe this legislation will end current and future litigation over the 8(g) issue, and by giving the States a small stake in revenues from a small area of the OCS, will actually spur OCS development. Moreover, compared to the 50-percent share States receive of mineral revenues from all onshore Federal lands, this 8(g) proposal is quite reasonable.

I urge my colleagues to support the committee's position opposing the proposed amendment.

Mr. HEFLIN. Mr. President, I rise in opposition to this amendment which would drastically alter the Energy and Natural Resources Committee's recommendations with regard to the current and future allocation of revenue generated by Federal oil and gas leases in the so-called 8(g) zone.

For the past 7 years, revenue from oil and gas leases has been held in escrow because of a longstanding dispute over its allocation between the Federal Government and seven coastal States. The revenue held in escrow has now grown to over $5.8 billion. The parties involved want the dispute settled as soon as possible so this revenue can be put to use. I believe the Energy Committee has devised a fair and workable solution to the allocation problem and I urge my colleagues to approve this plan.

The controversy over these funds centers around section 8(g) of the Outer Continental Shelf Land Act Amendments of 1978 which provided for the escrow of Federal revenue attributed to oil and gas leases underlying both Federal and State lands. Under section 8(g) the revenue must remain in escrow until an agreement can be reached on how to divide the money.

With negotiations stalled, the conferees on the 1986 first concurrent budget resolution directed that legislation be executed to settle the dispute between the Federal Government and the coastal States regarding the OCS receipts. This recommendation assumed that the Federal Government would receive a 73-percent share of the bonuses and rents held in escrow and the States would get the remaining 27-percent. This formula was ultimately adopted by the Senate Energy and Natural Resources Committee as well as the House Committees on Interior and Insular Affairs and Merchant Marine and Fisheries. The committees also proposed that the revenue to be allocated include $1 billion in past royalties. This was done pursuant to section 8(g) which specifically provided that the Interior Department would escrow all "bonuses, royalties, and other revenues."

The Energy Committee proposal settles two other important issues. First, the committee recommends that future bonuses, rents and royalties from the 8(g) tract be divided on the same 73-percent to 27-percent basis. Second, the committee proposal would add to the escrow account $2 billion that was withheld by the Interior Department. The Interior Department withheld these revenues from the 8(g) account arguing that this revenue came from oil and gas leases where there was not a common pool with State waters. Instead of depositing the revenue attributable to these tracts, Interior prorationed revenues from tracts that were partly within the 8(g) zone. The Energy Committee, as well as the two House committees, rejected Interior's prorationing recommendation as being inconsistent with Interior's own accounting procedures, as well as the only court case to address this issue, Texas versus Interior, which required the escrow of all revenues. Under the committee recommendation the States would be allowed to recoup 27 percent of those disputed amounts.

Mr. President, the committee's recommendation will achieve over $4 billion in budget savings to the Federal Government from the release of these funds from escrow. This proposal, while certainly not perfect, will finally settle the allocation issue in a fair and equitable way. By adopting the committee proposal, further litigation can be avoided and a workable framework can be established for the future allocation of 8(g) revenues.

I urge my colleagues to oppose the amendment and support the Energy Committee's recommendations.

Thank you, Mr. President.

The PRESIDING OFFICER. The time on that side has expired.

Mr. JOHNSTON. I yield the balance of the time to the distinguished Senator from Idaho.

The PRESIDING OFFICER: Without objection, it is so ordered.

One minute is remaining.

Mr. McCLURE. Mr. President, I hope this amendment is not adopted. I will tell you why very briefly.

Mr. President, the recommendations contained in the legislation reported by the Committee on Energy and Natural Resources to the Budget Committee contains legislation to resolve the ongoing litigation over the escrowed revenues from the 8(g) zone of the Outer Continental Shelf in accordance with the assumption underlying the instruction to the committee. I must say that I was not particularly pleased when the Senate directed us to resolve the litigation since that matter had not been on either our committee's or the administration's agenda for this session. I was even less pleased when I learned that the administration had decided to change their assumptions on how much revenue was at issue. Needless to say, they did not seek to increase the amount which would become available to the States. I believe the Administration, particularly OMB, polarized the parties by taking this action, thereby making compromise more difficult.

I want to offer my congratulations and deep appreciation to all the members of the committee for their efforts to resolve this issue within the timeframe provided to the committee. I also want to express my appreciation for the restraint that was shown in limiting our action to the resolution of the litigation and excluding collateral concerns, unlike the other body. I will return to that subject in a moment, but I did want the Senate to be aware that this was not a simple issue and that all members contributed to a definition of the issue and a resolution which should eliminate the need for us to ever revisit this subject.

While the committee could have simply allocated the present amount of revenues in the 8(g) account once we had determined exactly how much should be in there, that would not have resolved the litigation. The result would have been that we would have to go through this same procedure again in 3 years. We decided that would not be a responsible recommen-

dation. If the Senate desires that this issue be resolved, then it should be resolved with finality.

The recommendation of the Committee on Energy and Natural Resources does just that. It defines the account and provides a clear and unambiguous allocation of future revenues. Various claims brought by the States, such as the argument that the term revenue in the original legislation includes taxes, have been settled. The term means only bonuses, royalties, and rents. The assumption of the budget resolution that these revenues would be split on a 73-percent Federal—27-percent State basis has been followed. The only issue which would remain is the definition of State territorial boundaries, and the committee recommendation provides a mechanism to resolve the allocation of 8(g) revenues to the States when that issue is settled.

The recommendation of the committee is responsible and fair. The background and section-by-section analysis are set forth in the report of the Budget Committee and I would invite the attention of my colleagues to that report.

I did want to return to the action of the House Committee in including extraneous provisions which would set up a State veto over Federal leasing of Federal lands on the Outer Continetal Shelf. The so called "Miller" amendment is not only irrelevant to the resolution of the 8(g) dispute, it runs contrary to the intent of the Congress when it enacted the 1978 amendments. At that time we specifically rejected such an approach. There is a myopia loose which conveniently forgets the lines at the gas stations and would subordinate the security of the country to parochial concerns.

I seriously considered, and may yet offer, an amendment to deny any funds from the 8(g) zone to any State which has either a Federal or a State moratoria in place. We cannot afford to permit this Nation to become hostage to foreign elements again.

Frankly I am as distressed at the position of portions of the administration as I am with the actions of the other body. The Secretary of Energy wants to abolish the Synthetic Fuels Corporation, which might give us an alternative to offshore leasing, while the Secretary of the Interior wants to impose a 15-year moritorium off the coast of California. If California can have a moratorium, I fail to see why Louisiana or Texas or Alaska cannot have one.

The Miller amendment goes even beyond that to permit the States to hold the entire country hostage. This entire process is pernicious, foolhardy, and completely contrary to any rational concern for the welfare of this Nation and our obligations to the citizens who elected us.

There are three points that I want to make very clearly and quickly.

First of all I did not welcome the assignment given our committee to solve this issue. We were given that assignment. We did the best we know how to weigh the issues and the equities involved to come up with an equitable solution.

With respect to the estimates that have been made, the Office of Technology Assessment says those estimates of revenues are "not worth the paper they are printed on." That is a quotation.

Second, Mr. Bittenburg, who developed those figures, says they are very broad bands of uncertainty. So the Senator from Texas is correct.

Look at those estimates with very great skepticism.

With respect to the cap, I would have been willing to negotiate a cap because I think the estimates are so wildly out of proportion that we could safely put a cap in there far below their estimates, maybe 20 percent of their estimates, and still be totally safe.

But that requires us to negotiate some allocation within that period. I hope the amendment is not adopted. I move to table the amendment and ask for the yeas and nays on my motion to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1040. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER (Mr. HUMPHREY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—54

Andrews	Goldwater	Melcher
Baucus	Gramm	Murkowski
Bentsen	Harkin	Nickles
Bingaman	Hatch	Nunn
Boren	Hatfield	Pryor
Burdick	Hawkins	Quayle
Byrd	Heflin	Rockefeller
Cochran	Helms	Sasser
Cohen	Hollings	Simpson
Cranston	Inouye	Stennis
D'Amato	Johnston	Stevens
DeConcini	Kennedy	Symms
Denton	Kerry	Thurmond
Domenici	Laxalt	Trible
East	Long	Wallop
Exon	Matsunaga	Warner
Ford	McClure	Wilson
Garn	McConnell	Zorinsky

NAYS—45

Abdnor	Dixon	Gorton
Armstrong	Dodd	Grassley
Biden	Dole	Hart
Boschwitz	Durenberger	Hecht
Bradley	Eagleton	Heinz
Bumpers	Evans	Humphrey
Chafee	Glenn	Kassebaum
Danforth	Gore	Kasten
Lautenberg	Mitchell	Roth
Leahy	Moynihan	Rudman
Levin	Packwood	Sarbanes
Lugar	Pell	Simon
Mathias	Pressler	Specter
Mattingly	Proxmire	Stafford
Metzenbaum	Riegle	Weicker

NOT VOTING—1

Chiles

So the motion to lay on the table amendment No. 1040 was agreed to.

Mr. McCLURE. I move to reconsider the vote by which the motion was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I think the distinguished Senator from California [Mr. WILSON] has an amendment.

AMENDMENT NO. 1041

(Purpose: To exempt Israel bonds from the imputed interest rules of the Internal Revenue Code of 1954)

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. I thank the Chair and I thank the distinguished manager.

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 1041.

Mr. WILSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, add the following:

"Section . Section 7872 of the Internal Revenue Code of 1954 shall not apply to loans made to the State of Israel.

"(a) IN GENERAL.—Subsection (c) of section 7872 of the Internal Revenue Code of 1954 (relating to below-market loans to which the section applies) is amended by adding at the end thereof the following new paragraph:

"'(4) EXCEPTION FOR ISRAEL BONDS.—This section shall not apply to bonds issued by the State of Israel.'.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in section 172(a) of the Tax Reform Act of 1984.".

Mr. WILSON. Mr. President, my amendment is designed to remedy an unintended impact of the imputed interest rules that we passed as part of last years tax bill, and is identical to S. 1619 which I introduced on September 10, 1985.

The problem we must address is that under the imputed interest ules, Israel bonds would become so disadvantage that no one could afford the tax consequences of buying them.

Under present law, certain below-market loans are subject to so-called imputed interest rules. The list of

loans subject to these rules was quite a bit longer a few weeks ago than it is today because we passed a bill to remove most of the onerous provisions of the law as it was passed last year. However, one very important impact that was not remedied by our action on H.R. 2475 was the impact that the law has on bonds issued by the State of Israel.

Israeli bonds serve a vital role in the fight against Israel's staggering financial responsibilities. At present, Israel devotes approximately two-thirds of its budget to defense and debt service. Many of the bonds that are issued do yield market rates, but as a means of lowering the costs of debt service, some bonds yield as low as 4 percent. This savings of more than 50 percent on what Israel would otherwise have to pay is of enormous importance. Furthermore, it must be evident that the people who buy these bonds do so not as a matter of tax planning, but with entirely philanthropic motives. Indeed, according to the Wall Street Journal, Israel sold more than $102 million of its bonds in the United States in 1984, and an additional $44 million worth in the first 7 months of this year.

For our tax laws to penalize such efforts—by taxing the holders of Israel bonds for income of more than twice what they actually receive—would not only be unfair, but truly counter to our national interests. It is quite apparent that we should do all that we can to encourage voluntary efforts to solve Israel's almost overwhelming financial problems.

Mr. President, I know of no Member of the Senate, or of the other body for that matter, that opposes passage of this legislation. It is intended to cure what was clearly an omission and an unintended impact. I would have preferred to offer my amendment to a less controversial, less cluttered, and more relevant bill. However, because of the possibility that there will be no other vehicle available this year to remedy this injustice in our tax system, I am compelled to offer my amendment today.

Mr. President, I thank the distinguished majority leader, as well as the distinguished chairman of the Finance Committee, Senator PACKWOOD, for their help in moving this matter along.

Mr. MOYNIHAN. Mr. President, I rise today to join my distinguished colleague Senator WILSON in cosponsoring an amendment to correct an unintended consequence of the Deficit Reduction Act of 1984. That legislation included a provision designed to prevent certain tax avoidance schemes involving the use of below market or zero interest loans.

The problem is this. The Government of Israel has for many years sold low interest bonds to Americans and others abroad. As presently written, the low interest loan rules enacted in the Deficit Reduction Act may require American purchasers of Israeli bonds to pay taxes on th difference between the bonds' return—4 percent—and the market rate of interest on comparable obligations. In other words, American holders of Israeli bonds may be taxed as if they had received a 9 or 10 percent return on their investment rather than the 4 percent they actually receive.

Congress never considered the situation with Israeli bonds when the low interest loan rules were enacted last year. These rules were designed to eliminate certain tax abuses in loan transactions, not to hamper the bond sales of one of this Nation's most valued allies. The amendment I join in cosponsoring today should clarify this matter, by exempting obligations issued by the Government of Israel from the low interest loan rules. I urge my colleagues to join us in this expeditious solution to this problem.

Mr. WILSON. I ask unanimous consent that Senators HAWKINS and MOYNIHAN be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Does the Senator yield back the remainder of his time? I am going to take 30 seconds and then yield back mine.

Mr. President.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Regardless of how valid this amendment is, I do not believe it belongs on this reconciliation bill. I yield back the remainder of my time, and I make a point of order that the amendment is not germane.

The PRESIDING OFFICER. The point of order of the Senator from New Mexico is well taken.

Mr. WILSON. Mr. President, I move to waive the point.

Mr. DOMENICI. Mr. President, parliamentary inquiry. A motion to waive is out of order; the Chair has already found the amendment to be out of order?

The PRESIDING OFFICER. The Senator from New Mexico is correct.

Mr. DOMENICI. The amendment has fallen, has it not?

The PRESIDING OFFICER. The Senator from New Mexico is correct.

Mr. DOMENICI. I thank the Chair.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from myself and JAMES MCCLURE.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, October 22, 1985.

DEAR COLLEAGUE: You have probably received recent correspondence urging your opposition to the Outer Continental Shelf Lands Act provision of the Budget Reconciliation package, and the "give-away" of "BILLIONS" of federal dollars that it entails. These missives variously estimate the size of this "give-away" to be "$6-12 billion"; "$4-6 billion"; or the "$4.5-6.5 billion" estimate in the Metzenbaum-Evans Dear Colleague.

Anyone familiar with the OCS leasing program will instantly realize these estimates to be preposterous.

These estimates purport to reflect the amount of royalties which coastal states will receive from the so-called 8(g) zone—a 3 mile wide stretch of coastal waters just seaward of the federal-state seaward boundary. The provision in the Budget Reconciliation package reported by the Senate Energy Committee mandates that the coastal states receive a 27% share of the future federal royalties to be recognized from this zone. It is this provision that opponents point to as a "raid" on the federal Treasury.

In the last 7½ years the states' 27% share of the 8(g) royalty account has totaled only $48 million, or an average rate of $6½ million per year for all the states. If it were to continue to produce at this rate for 30 years without any depletion, it would produce a total of $194 million over the 30 year period.

CBO estimates the states' share of future royalties from the 8(g) zone to be $27 million per year, or a total of $810 million over 30 years.

Of course, both of these figures would be subject to reduction for inflation and the time value of money by a factor of approximately 75% over the 30 year period.

So in view of these two figures, $194 million (straight line extrapolation of present royalties), or $810 million (the CBO 30 year estimate), just how does Interior or the Metzenbaum-Evans letter arrive at the dollar figure between $4-12 billion? The answer is that they do so through admittedly suspect methodology and wildly optimistic projections.

Indeed, for this 3 mile wide band to produce state revenues of this magnitude, total production would have to run between $89 billion and $267 billion, for the period. For the Metzenbaum-Evans allegations to prove true, oil production from the 8(g) zone would have to be 28 times greater over the next 30 years than it has over the last 7½. All of this comes in the face of a report issued last year by the Mineral Management Service which revised downwards the Interior's estimates of recoverable OCS reserves by 50%.

The OCS provisions reported by the Senate Energy Committee reflect a very thoughtful and balanced compromise to a complicated and longstanding dispute. This compromise, which is virtually identical to that reported by two committees in the House, would save over $300 million more during the FY 1986-88 period than would the partial solution assumed by the Budget conferees. We urge you to reject the unfounded and unrealistic assertions of opponents of this compromise and to support its retention on the Senate floor.

Sincerely,

JAMES A. MCCLURE,
U.S. Senator.
J. BENNETT JOHNSTON,
U.S. Senator.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me urge my colleagues who have amendments to come to the floor and offer them. I have had a number of Senators ask me about the plans for tomorrow and I have to make some judgment here by at least 2.30 p.m.

If we cannot complete action on this bill and two others today we will be here tomorrow and it looks more and more like that. We have been 3½ hours on this measure and disposed of two amendments, one on a rollcall and one subject to a point of order.

So, I hope at 2:30 p.m. I will be able to advise my colleagues on each side whether there will be a session tomorrow. But unless Members start showing up I think the answer is fairly obvious.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1042

(Purpose: To freeze the effects of a Wage Area Survey regarding Federal blue collar pay rates for Department of Defense, Veterans' Administration, and other Federal agency employees in Tucson, AZ)

Mr. DECONCINI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 1042.

Mr. DECONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title VIII of the bill, insert the following new section:

SEC. . Notwithstanding any other provision of law limiting the amounts payable to prevailing wage rate employees during the fiscal year 1986, wage schedules or rates payable in the Tucson, Arizona wage area shall not be reduced as a result of a wage survey conducted during fiscal year 1985.

Mr. DECONCINI. Mr. President, I will try to be very brief. This is an amendment that addresses an anomaly that has occurred in the Tucson, AZ, wage area and which is currently affecting the pay of over 800 blue-collar Federal workers at Fort Huachuca, the Veterans' Administration, and other Federal agencies in the Tucson area. These are not high-priced Federal workers; these are the blue-collar workers. I wish to stress that. Let me explain briefly what has happened.

Under prevailing wage law, blue-collar wage surveys are done periodically in the private sector blue-collar work force to help the Office of Personnel Management and the affected agencies determine what the comparable blue-collar pay rates should be for Federal workers in the Defense Department and other agencies. These surveys are performed and reviewed by the agencies; Federal employee unions; and the OPM, as I understand it. Then once there is concurrence on the survey, the survey results are applied to the affected agencies and departments and blue-collar wages are adjusted accordingly to those agencies.

Mr. President, such a survey was performed in the Tucson wage area during fiscal year 1985, with the results to be applied to Federal blue-collar wages in fiscal year 1986, starting November 10. The results were that, unlike any other wage survey area in the Nation, certain Tucson area blue-collar Federal workers were hit with as much as a 10-percent pay cut. Normally, I would be hard pressed to single out one particular wage survey area for special consideration. But the major factor in the Tucson wage survey, which led to the devastating blue-collar wage cut, was the omission of copper industry blue-collar work force data from the Tucson wage area survey. Historically, the copper industry has always been included in these wage surveys with copper industry wage rates included in the equation used to determine Federal blue-collar pay. But it was left out. Generally, the copper industry pay rates have been substantially higher than other area industries, and there is no reason it should not be in. Therefore, the failure to put the copper industry data into the fiscal year 1985 survey has skewed in the wrong manner. The result has been, in part, the huge percentage pay cut which is unfair to these workers.

Mr. President, my amendment would freeze the pending pay cut for these 800 Federal blue-collar workers in Tucson, AZ, wage area for the balance of fiscal year 1986. Let me quickly add that both OPM and DOD have indicated to me that they expect next year's wage survey in Tucson will result in about a 5-percent increase in pay rates for blue-collar workers and a comparable correction in blue-collar pay for certain Federal workers. Therefore, the net effect of my amendment would be to hold the Federal blue-collar workers harmless from the effects of this anomalous 1-year, drastic pay cut until next year when the pay would presumably increase by 5 percent. That would mean that blue-collar Federal workers would still suffer a 5-percent pay cut below 1985 pay rates. But my amendment would allow them to adjust to this smaller pay cut over the balance of fiscal year 1986.

Mr. President, I do not take lightly the perception that we are tinkering with a prevailing wage rate system that, in general, has been fair and worked well. But the situation in Tucson is, by all accounts, an aberration that is so severe, so unexpected and, perhaps, tainted by the lack of copper industry wage data, that we should offer some degree of relief to these workers for the balance of this current fiscal year. Equity and fairness dictate this course of action and I hope that the Senate will see fit to make this exception. I have notified the chairman of the Governmental Affairs Subcommittee with jurisdiction over this matter and I hope that he would have no objections to making this exception for the Tucson, AZ, wage survey area workers.

Mr. President, I urge the adoption of my amendment.

Mr. President, I have cleared this with Senator STEVENS of Alaska who chairs the subcommittee dealing with Federal employees and Senator EAGLETON of Missouri. They find no problem with this. I know it is a special situation but I ask the indulgence of my colleagues, and hopefully the amendment will be accepted.

Mr. McCONNELL. Will the Senator from Oregon yield for a question?

Mr. PACKWOOD. Yes.

Mr. McCONNELL. I am very interested in this question of Customs user fees. I have a question dealing with a situation in which there is a user paid Customs station, I mean Customs location at a port where the user reimburses the U.S. Customs Service for all of the facilities, including space, office furniture, computer terminals, and telephones, for the U.S. Customs Service at no cost to the Customs Service, and makes the Customs Service whole in every way for the services it provides at the facility. User paid Customs stations also include stations where the user reimburses Customs in the manner I have just described at Customs-designated small airports where the reimbursing entity uses the Customs facility for its exclusive benefit. Our reconciliation proposal provides that we would have a $5 charge for the user for each informal entry where the Customs Service prepares the document. The question to you is, Would this user fee apply in a situation where all the costs of the Customs Service were being reimbursed in this kind of a user-paid situation?

Mr. PACKWOOD. No. In a situation where the user reimbursed all the costs of the U.S. Customs Service at a particular location, there would be no user charge for informal entries at that location.

Mr. McCONNELL. Will the Senator yield further for further clarification?

Mr. PACKWOOD. Yes.

Mr. McCONNELL. The same section of the reconciliation bill dealing with the charge for an informal entry makes the statement that the user fee only applies when the documentation is prepared by the Customs Service. What does the preparation of the document by the Customs Service entail?

Mr. PACKWOOD. If the Customs Service physically has to fill in the document and must look up the TSUSA number applicable to the commodity, that would be preparation by the U.S. Customs Service. If in fact, the document is prepared by other than the Customs Service, either a broker or a carrier, and includes a TSUSA number, that document would be prepared by the user, and the charge would not apply.

Mr. McCONNELL. Thank you very much.

Mr. GORTON. Mr. President, parliamentary inquiry. Is the amendment by the Senator from Arizona germane to this bill?

Mr. DECONCINI. Mr. President, pursuant to——

Mr. GORTON. I have a parliamentary inquiry.

Mr. DECONCINI addressed the Chair.

Mr. DECONCINI. Mr. President, after the Chair rules, I ask pursuant to section 904 of the Budget Act——

The PRESIDING OFFICER. Will the Senator withhold? A parliamentary inquiry has been put. The Chair responds by saying that the amendment appears not to be germane.

Mr. GORTON. Mr. President, I make a point of order against the amendment.

Mr. DECONCINI. Mr. President, pursuant to section 904(b) of the Budget Act, I move to waive the germaneness requirement contained in section 305(b) of that act for consideration of my pending amendment, and ask for the yeas and nays on this motion.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. DECONCINI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, I ask for the yeas and nays on my motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Mr. President, I move to lay on the table the motion of the Senator from Arizona, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the motion of the Senator from Arizona. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER (Mr. HECHT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—36

Andrews	Gramm	Packwood
Armstrong	Grassley	Pell
Boschwitz	Hatfield	Pressler
Chafee	Hawkins	Proxmire
Cochran	Hecht	Roth
Cohen	Heinz	Rudman
Danforth	Helms	Simpson
Dole	Kassebaum	Stafford
Domenici	Lugar	Symms
East	McClure	Wallop
Evans	Murkowski	Warner
Gorton	Nickles	Zorinsky

NAYS—63

Abdnor	Glenn	Mattingly
Baucus	Goldwater	McConnell
Bentsen	Gore	Melcher
Biden	Harkin	Metzenbaum
Bingaman	Hart	Mitchell
Boren	Hatch	Moynihan
Bradley	Heflin	Nunn
Bumpers	Hollings	Pryor
Burdick	Humphrey	Quayle
Byrd	Inouye	Riegle
Cranston	Johnston	Rockefeller
D'Amato	Kasten	Sarbanes
DeConcini	Kennedy	Sasser
Denton	Kerry	Simon
Dixon	Lautenberg	Specter
Dodd	Laxalt	Stennis
Durenberger	Leahy	Stevens
Eagleton	Levin	Thurmond
Exon	Long	Trible
Ford	Mathias	Weicker
Garn	Matsunaga	Wilson

NOT VOTING—1

Chiles

So the motion was rejected.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the rollcall on the DeConcini motion be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GORTON. Mr. President, this side yields back all the time on the motion.

Mr. DECONCINI. I yield back the remainder of my time on the motion.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion to waive.

The motion was agreed to.

Mr. DECONCINI. I move to reconsider the vote by which the motion was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 1042) was agreed to.

Mr. GORTON. Mr. President, I yield to the Senator from Oregon.

AMENDMENT NO. 1043

(Purpose: To allow social security coverage of newly hired members of the Connecticut State Police)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] for himself, Mr. DODD, and Mr. WEICKER, proposes an amendment numbered 1043.

On page 265, between lines 7 and 8, insert the following:

SEC. 769G. COVERAGE OF CONNECTICUT STATE POLICE.

Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

Mr. PACKWOOD. Mr. President, this is an amendment that would allow the State of Connecticut to let newly hired State police be brought under the Social Security Program if they want to. They do not have to.

It is voluntary. We are not forcing them into it. About 90 percent of the State of Connecticut employees are now covered, and under a new agreement they can be brought in. This amendment would permit that.

Mr. WEICKER. Mr. President, this amendment will extend Social Security coverage of new Connecticut State police officers. The State of Connecticut has reached a collective bargaining agreement with the State police which calls for including newly hired officers under the Social Security Program. In order to implement this agreement, however, a technical change must be made in the Social Security law to authorize the Governor of Connecticut to include the new hires under Social Security.

It is also imperative that the change in the Social Security law occur before the end of this year or, under the

terms of the contract agreement, some of the retirement provisions will need to be renegotiated.

It is my understanding that this amendment is supported by the Connecticut State Employees Retirement Commission, the State Police Union, and the Labor Relations Division of the State of Connecticut Department of Administrative Services.

Mr. President, I strongly urge adoption of the amendment.

Mr. DODD. Mr. President, on behalf of my colleague from Connecticut [Mr. WEICKER], I am very pleased to join Senator PACKWOOD in offering an amendment which will help to facilitate the coverage of new members of the Connecticut State Police under the Social Security System. This is a purely technical amendment which pertains only to the State of Connecticut and to the coverage of new State police employees under the Social Security Act. I would also like to express my appreciation to Senators PACKWOOD and LONG for their assistance in bringing this amendment to the floor today.

Currently, about 97 percent of the employees of the State of Connecticut are covered by Social Security. The one remaining exception is the State's police employees. However, under a collective-bargaining agreement reached between the State and its State police union last year, the State would be authorized to request coverage under Social Security for police employees hired on or after May 8, 1984. Our amendment would simply enable this agreement to be implemented under the current requirements of the Social Security Act.

Let me emphasize that all the interested parties in the State support the amendment which we are offering today. The amendment applies only to the State of Connecticut and only to newly hired State police employees. We have also been informed that our amendment has no budget impact.

I urge my colleagues to support the amendment.

Mr. GORTON. Mr. President, this is a bipartisan amendment. It is cleared on this side.

Mr. JOHNSTON. It is cleared on this side.

The PRESIDING OFFICER. Is all time yielded back?

Mr. PACKWOOD. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1043) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question? Is it the intent that the Senator desires that I go forward with my tobacco amendment at this point?

Mr. GORTON. the managers on both sides would be delighted if the Senator from Ohio would go ahead with this amendment.

Mr. METZENBAUM. Then I will suggest the absence of a quorum temporarily so that I can see if Senator Eagleton is ready to come over and Senator FORD. I would certainly like to have him on the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I am about to send an amendment to the desk in connection with the issue of tobacco. Before doing so, I note that the coauthor of the amendment, Senator EAGLETON, is not on the floor. I want to be courteous to him, and I have taken this matter up with the manager of the bill as well as with Senator FORD.

Therefore, I ask unanimous consent that 3 minutes be reserved for Senator EAGLETON to speak in support of the amendment, that the 3 minutes be taken out of the 10 minutes we have on our side, and that if the time expires, in no event would it be later than 3:10 p.m. that we would hold up the matter so far as Senator EAGLETON is concerned.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1044

(Purpose: To remove the tobacco program provisions)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], on behalf of himself and Mr. EAGLETON, proposes an amendment numbered 1044:

On page 372, strike out lines 3 and 4 and insert in lieu thereof the following:

Part 3—Tobacco Products Excise Taxes

On page 374, strike out line 1 and all that follows through line 9 on page 415.

Mr. METZENBAUM. Mr. President, I yield myself 5 minutes of the 10 minutes allocated to me.

Mr. President, these provisions having to do with tobacco do not belong in the reconciliation bill. They belong in a separate agriculture bill. They were included as a result of a deal on the floor of the Senate. The distinguished Senator from North Carolina stated it and said it publicly:

I reluctantly gave my support to the 16-cent tax in exchange for reform of the program.

That is how we got the 16-cent tax as well as the provisions in the budget reconciliation measure.

Tobacco is in reconciliation because it is alleged to save money. But the Congressional Budget Office says that cash flow savings will be $200 million.

However, I point out one thing: That does not include—and I emphasize this—losses to be incurred by the Commodity Credit Corporation when tobacco is sold at 10 cents on the dollar, as provided in this legislation.

The committee report says:

It is anticipated that the pre-1982 tobacco will recover only about 10 percent of the loan principal, resulting in a loss to the Commodity Credit Corporation of at least $636 million. In addition, there is the expectation that the poor quality 1983 burley tobacco will be sold at a discount of 90 percent or more, with the loss falling upon CCC rather than the no-net-cost account. This could mean on additional loss to the CCC of at least $53 million.

What we are saying, Mr. President, is that we are talking about $1.1 billion that will have to be appropriated. I do not call that a saving; neither does the administration.

I point out to my colleagues on the other side of the aisle a letter which was received by Senator DOMENICI, dated October 14, written by the Director of the Office of Management and Budget, James Miller. He wrote as follows:

Although these provisions state that one of the goals is to maintain the no net cost to the taxpayer of the tobacco program, in reality the bill imposes significant costs on the taxpayer. This legislation provides for the complete disposal of all stocks of burley and flue-cured tobacco at substantial discounts.

Continuing on, the OMB says:

The Government would lose $1.1 billion as a result of being forced to sell its stock at prices significantly below prevailing market prices, without reimbursement from tobacco producers or cigarette manufacturers.

The savings are illusory. This bill will cost $1.1 billion. This is a controversial bill and it is controversial even in the tobacco States. It should not be considered under reconciliation rules. It should be considered in detail as part of the farm bill in the same way we are considering every other commodity. The dairy farmers would like to have their program protected this way. So would corn, wheat, cotton, rice, sugar, and peanuts. Why should this tobacco issue be given special privilege to be included in the budget reconciliation measure under limited time? Why? What kind of arrangement, what kind of deal does this mean for the American people? All of the other programs are subject to full scrutiny and to amendment. And there is no excuse to give the tobacco bailout treatment that is given to no other commodity.

My amendment does not address itself to the totality of the issue. The farm bill is still coming up. The amendment can be considered in the farm bill. It should not be a part of the budget reconciliation measure,

particularly when it will cost the U.S. Treasury $1.1 billion.

Mr. President, I reserve the remainder of my time.

Mr. GORTON. Mr. President, I yield 2 minutes to the distinguished senior Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the distinguished manager of the bill and I thank the Chair.

Mr. President, I have the highest respect for my friend from Ohio and I am baffled as to why he is offering this amendment.

Let me answer some of these questions as briefly as I can.

First of all, reconciliation was chosen as the vehicle because of the direct tie with the increase in the 16-cent tax on cigarettes and making the tobacco program reforms.

Furthermore, the House reconciliation bill already dealt with the tobacco program as it earmarked 1 cent of the 16 cents to be used to pay for the operation of the Tobacco Program without making the price support reductions and other reforms in the Senate bill.

Time—I can answer that one easily. And I expect that the distinguished Senators from Kentucky, both of them, will respond to that. The burley tobacco markets were scheduled to open on November 18 and that has now been postponed to December 2, and further delay is a tremendous and unreasonable burden to place on the burley farmers, most of whom are in Kentucky, some in North Carolina and other States.

But let me say this: For years I have been telling all of the so-called tobacco family that the trouble with the Tobacco Program was that the support price was higher than the market price. I had to drag people kicking and screaming to the table. We had over 100 meetings this year before we had some area of agreement.

Now, this program will not have a support price above the market price and, therefore, no longer will tobacco be grown for sale to the Federal Government. I would think that the distinguished Senator from Ohio would applaud that. I thought he would be on this floor saying, "Hooray. Senator HELMS has done something, Senator MCCONNELL has done something, Senators FORD, EAST, and the rest of them have done something."

But, no, here he comes with a list of vagaries that just bewilder me.

This legislation is designed to restore stability to the tobacco program so it will not cost anything. Indeed, because it will reform the tobacco program, it will result in some $235 million in direct savings over current law.

Finally, the tobacco family listened to my message about this business of support price being higher than the market price.

Again, I say the distinguished Senator from Ohio should be applauding this instead of opposing it.

The present support levels are too high. They are not competitive in the world market. I just do not understand why the distinguished Senator from Ohio does not understand that.

No one in the tobacco family really likes this bill. I had to draw all of the competing forces together, and Senator FORD will testify to how difficult that was. Senator MCCONNELL was in on it, and other Senators.

So this is a good bill that ought to have unanimous support.

I reserve the remainder of my time.

Mr. GORTON. I yield 2 minutes to the distinguished senior Senator from Kentucky.

Mr. FORD. Mr. President, I thank the distinguished manager of the bill.

Let me just make a point or two. The distinguished Senator from Ohio is not arguing this amendment. He is arguing his next amendment. He wants to instill in the minds of his colleagues what the next amendment will bear.

All I want you to look at is this amendment eliminates the tobacco program, pure and simple. It eliminates the tobacco program.

I do not believe there is a Member of this Senate outside of the two sponsors of the bill who would want to see anyone in their State eliminated for their future. So what we are looking at here is the elimination of the program. The health groups do not want it. The tobacco people do not want it. Manufacturers do not want it. I believe that the health groups, as I said, do not want to really eliminate the program. They want to keep control on it so you will not grow from fence row to fence row.

And why is it in reconciliation? I just want to elaborate on this one moment. The House placed the tobacco bill in reconciliation. We have done the same thing over here. We increased the cigarette tax to 16 cents, or allowed that to stay on, a 6-cent increase. We added new taxes to smoke less and the tobacco bill that was presented as in this Reconciliation Act saves $236 million from this budget period forward for 3 years.

The next 3 years it will double that and save $900 million. So why should not this piece of legislation be in reconciliation? Why should it not have come from Finance?

So, I say to my distinguished colleagues, my tobacco season in Kentucky for sales will start in less than 2 weeks.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. FORD. I thank the Chair.

Mr. GORTON. I yield 2 minutes to the junior Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator.

Mr. EAGLETON. Will the Senator yield me 2 minutes?

Mr. METZENBAUM. Yes.

The PRESIDING OFFICER. The Senator from Kentucky has the floor.

Mr. EAGLETON. I am sorry.

Mr. MCCONNELL. I thank the Senator from Washington.

Mr. President, I rise in strong opposition to the motion of the Senator from Ohio to strike section 792 from the Senate Reconciliation Act. I thought 2 weeks ago that the Senate clearly spoke to this issue, but since it has been revisited there are some important considerations which must be brought before the Senate.

It appears increasingly obvious that a 16-cent permanent excise tax will be established on cigarettes. This 16-cent tax represents a 100-percent tax increase, and while it is clearly unjustified in my opinion, the will of the Senate is that the 16-cent cigarette tax will be made permanent. Given that, we must afford the tobacco growers in my State, in North Carolina, in Virginia, in Tennessee, in the Senator's home State of Ohio, and in 15 other States in this country, the opportunity to continue making a profit by growing a perfectly legal crop. In raising the cigarette excise tax, we effectively are penalizing a $11 billion a year industry in Kentucky, so I see nothing inappropriate about including improvements in the tobacco program in a bill which increases the cigarette excise tax.

The arguments regarding the merits of the cigarette tax are well known and were debated at length 2 weeks ago. But I think some highlights of the program improvements are in order here.

As many of my colleagues know, this package of program improvements is a delicately balanced agreement reached after months of negotiations between grower groups and cigarette manufacturers. It is bipartisan package in the truest sense—the package is supported by Flue-cured and burley grower groups, Republicans and Democrats, the tobacco growers, in six Southeastern States. For the program improvement we envision to be successful this package of improvements must be accepted intact with no changes. A small change could jeopardize the whole agreement, and in the absence of an agreement, Uncle Sam will be stuck with about 4 billion dollars' worth of tobacco. We can do better than that, Mr. President, and here's why.

This legislation provides that, after an initial 19-percent reduction in the tobacco price support loan rate, the system of price supports governing the tobacco program will be totally market driven in the future. Totally market-oriented, Mr. President. Perhaps the distinguished chairman of the Agriculture Committee could refresh my memory, but I don't believe that any other commodity covered by the 1985 Senate Committee farm bill is subject to total market-oriented loan rates. For that reason, there will be no need for the Senate to consider tobacco legislation in the near future since domestically grown tobacco will now be price competitive in the world market. Price-competitive tobacco means that surplus stocks won't pile up in the

future because U.S. grown tobacco will now find its way into the market channel instead of into the producer-owned inventory.

The company buy-out of current loan inventories is a critical part of this legislation. Because of artificially high price support rates, unprecedented surpluses of leaf have built up in producer held inventories. Enactment of the No Net Cost Tobacco Program Act of 1982 mandated that producers themselves would pay all costs associated with maintaining this tobacco loan inventory. The costs of carrying this tobacco have become prohibitive because of the huge volume of tobacco in inventory and no clear resolution to the problem of the industry can be made until this surplus tobacco is moved into the marketplace.

Therefore, the domestic cigarette manufacturers have agreed to purchase the millions of pounds of surplus tobacco in inventory, that they say they neither need nor want, at a cost exceeding $2 billion. We start out with a clean slate in the loan inventory, and all future costs associated with maintaining such inventory will be shared equally by producers and companies.

Let me emphasize for a moment, Mr. President, that point. No commodity group, other than tobacco growers, pays for its own program. Sure, there are number of commodity groups in which producers pay into a promotional fund. But producers of no other commodity pay for price support of their commodity program. Add to this unique arrangement the fact that cigarette companies will share in the costs of the tobacco program after enactment of the provisions of this bill and you have what I believe, Mr. President, is an outstanding arrangement. Let's leave well enough alone.

Finally, Mr. President, this tobacco proposal is truly a producer bill that is needed to maintain the viability of a program that has served rural America for over 50 years. It affects 150,000 growers in Kentucky and countless other farmers in neighboring States. Why, there are even 5,600 tobacco growers from the home State of the distinguished author of this amendment, who raised over $26 million worth of tobacco in 1984. We must not pull the rug out from under the thousands of farm families and rural communities who depend on tobacco production for their very existence.

The tobacco program improvements are not perfect. There are elements of the agreement on which the legislation is based that are bitter medicine for tobacco producers and cigarette manufacturers. But in an unprecedented show of unity within a multibillion dollar vertical industry, each group swallowed their medicine because they knew they had to do it to save the tobacco program.

I urge my colleagues to reject this effort to dismantle a true industry compromise and defeat this amendment.

I do not know of any other agricultural commodity coming before this body that is willing to take advocating a reduction in price support. In fact, the tobacco growers are taking a 16-percent reduction in price support.

Killing the program, terminating the tobacco program, which is precisely what the distinguished Senator from Ohio and the Senator from Missouri would like to do here, is going to have no positive effect.

If you eliminate the tobacco price support program, you will not do anything about the smoking of tobacco. It will still be produced. It is still a legal crop in America. It will be produced, some argue, more efficiently and less expensively and we all know that cigarette smoking is directly tied to the price of cigaretts.

If ever there were a commodity that it could be argued ought to be under a control production system, this is it. This is it.

The demise of the program would mean the end of over 150,000 people in my State who make some or all of their income from growing this legal crop. In fact, what you are talking about here with the demise of the program is doing nothing whatsoever about cigarette consumption in America but simply creating a depression in Kentucky and North Carolina and some other States.

In my judgment, that serves no good purpose, absolutely no good purpose. This commodity program is paying for itself.

The Senator from Ohio mentioned that it was going to cost the Government some money. Let me tell you with all due respect to the distinguished Senator from Ohio, if this program is not saved by the passage of this tobacco reform proposal, the growers——

The PRESIDING OFFICER. The Senator's time expired.

Mr. McCONNELL. I ask unanimous consent for another 25 seconds.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. I object, unless it is taken off the time of the Senator from Washington.

Mr. EAGLETON. Mr. President, will the Senator from Ohio yield me 2 minutes?

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. EAGLETON. Mr. President, the Senate is being asked to adopt a revised tobacco subsidy program which is estimated by OMB will cost the American taxpayer $1.1 billion.

This new improved tax giveaway has not been considered or approved by the Agriculture Committee. You can try to make it into a Finance bill but tobacco is supposedly within the domain of the Agriculture Committee.

Mr. President, we spent a considerable time on this bill arguing the horrors that would befall the budget process if we established the precedent of adding wholly extraneous matters to the filibuster proof reconciliation resolution. It was that reason the textile amendment was ultimately stripped from the bill and acted on separately.

Now I see no fundamental difference between the textile amendment and this tobacco provision. If one doesn't belong on the reconciliation bill, then neither does! There is only one reason we find the tobacco program hiding in the pages of this bill and that is it cannot stand the light of Senate debate. The sponsors of the program know that. They know that if normal Senate debate and voting procedures were to apply—as they most certainly should—this program would undergo major revisions or be killed outright.

This new program purports to keep tobacco supply in line with demand and thereby relieve the Government of future support costs. But I point out to my colleagues, these are the very same promises we heard about the so-called No Net Cost To Taxpayers Tobacco Program passed in 1982—a program that it turns out cost the taxpayer about $1.1 billion, the so-called no net cost. Do you remember that one, Mr. President?

The chairman of the Committee on Agriculture stated on July 14, 1982 when debate on this mis-named program began: ". . . the package of changes we urge the Senate to adopt today will assure that there are no losses for the Government and the taxpayer in the operation of the tobacco program; they will assure that U.S. tobacco will become more competitive with that grown in world markets." The sponsors of that program now concede that neither objective has been attained.

The No Net Cost Taxpayers Act that was put together in 1982 by what is termed the "tobacco family" did not result in stable markets and no losses to the Government. The GAO, in a report of February 8, 1985 states that: "Although the 1982 act is entitled the No Net Cost Tobacco Program Act of 1982, the program does not operate at no net loss to the taxpayer." In fact, the chairman of the Agriculture Committee on July 10, 1985 stated:

> Frankly, the No Net Cost Program has not worked as Congress intended. Much more tobacco—both Flue-cured and burley—has gone under loan than was ever anticipated. As a result of these massive loan stocks, Congress took a number of additional actions in 1983, including the freezing of the price supports farmers receive for 3 years. Again, this action has not worked as expected. So once again we are here in hope of getting it right this time. It is our hope to accomplish in a successful way the intentions of Congress—mandated by the House of Representatives in 1981—that the Tobacco Program be operated at no cost to the taxpayers—except the normal administrative expenses associated with any farm program.

Now Mr. President, we are being asked to accept as part of this reconcil-

iation bill what the chairman of the Agriculture Committee called on July 10:

The Tobacco Program Improvement Act of 1985, a bill designed to restore stability to the Tobacco Program, to improve its operation for family farmers, and to save the taxpayers billions of dollars from potential losses.

He further stated that this proposal was the result of efforts

. . . to improve the economic conditions for the entire tobacco family and to assure the well-being of more than half of a million family farmers.

The "tobacco family" came up with a lemon in 1982 and now we are being asked to accept on faith their latest proposal without thorough scrutiny by the Senate. The "tobacco family" may be confined to a few States, but what they propose has enormous consequences for all taxpayers and should therefore be considered by the full Senate.

There was extensive debate about the No Net Cost Program when it was considered by the Senate and there were amendments considered, but defeated which would have assured a true no net cost to the taxpayer. Now because this misbegotten and mislabeled program failed, we are again being asked to bail out tobacco with another $1.1 billion of the taxpayer's dollars. I strongly oppose any major bailout or revision of the tobacco program without at least thorough consideration by the Senate Agriculture Committee and considered in the context of the entire range of the farm bill itself.

Mr. GORTON. I yield 2 minutes to the distinguished junior Senator from North Carolina.

Mr. EAST. I thank the manager.

Naturally, I shall be brief, with 2 minutes. I believe it would be a travesty upon the legislative process if this very carefully crafted package, which took hours to develop, were destroyed in 10 minutes of debate time, 5 minutes for the distinguished and able Senator from Ohio. I say this is a carefully crafted package. It is actually a scaling down of the program, as the Senator from Kentucky has noted.

The tobacco States have accepted a 16-cents a pack tax on cigarettes, which is an increase in terms of the sunset provision that was originally in the law. The buy-down provision that is in it is a very vital component of maintaining the integrity of the program.

I think it would ill behoove either political party to try to destroy the program which exists in 22 States. Twenty-two States grow tobacco. And in these States, it is certainly true in North Carolina, South Carolina, Virginia, the Southeast, Kentucky a total of 22 States, it has become a part of the fabric of the economy. This program has been in existence going back to the period of the New Deal era. It was a product of the New Deal era and to destroy it by this amendment would, as the Senator from Kentucky has noted, be a reckless act.

I would certainly urge all of my colleagues to support this package and let us move on to other more serious business.

Mr. SASSER. I rise in opposition to this amendment which would have the effect of killing the Tobacco Program. Mr. President, the delay in considering this important legislation has already disrupted tobacco markets throughout the country. Passage of this amendment would only add to this confusion and cause great hardship to the farm families which rely on the tobacco crop.

All over Tennessee, our 38,000 tobacco farmers are bringing their crop to market. These farmers had hoped that tobacco auctions would begin around the 18th of November. The uncertainty already surrounding the Tobacco Program makes it very unlikely that we will hit that target date. Passage of this amendment could well shut down many tobacco markets permanently.

This is a matter of grave concern to the Tennessee tobacco grower. These hard working men and women depend on the Tobacco Program. They are tired of their livelihood being used as a political football here in Washington. They need a well-functioning Tobacco Program so that they can bring their crop to market and get a fair return on their product.

Now late last night, my distinguished colleague, Senator WENDELL FORD and others amended the bill extending the Dairy Program to set the price support for burley tobacco at $1.48 per pound and also to cap assessments under the No Net Cost Assessment Program at 4 cents per pound. This second provision brings welcome relief to tobacco farmers who have shouldered increasing assessment burdens over the past 3 years.

I certainly hope that the House of Representatives will approve this stopgap measure. This temporary measure should help bring a degree of stability to tobacco markets while we await final action on the more extensive revisions to the Tobacco Program contained in the budget reconciliation bill. We must not add further confusion to this situation by undercutting the efforts begun last night.

The Tobacco Program provisions contained in the reconciliation bill call for a $1.45 price support level. The bill also substantially lowers assessments under the No Net Cost Program and splits the burden of paying the assessments evenly between growers and tobacco companies, a significant improvement over the current program. As part of this agreement, major cigarette manufacturers would purchase most of the existing surplus which has been a major factor in depressing tobacco prices and increasing the costs of the tobacco program.

Now the reconciliation bill was reported on October 2. It should have been the immediate order of business for the Senate, and we should have stayed on this bill without delay. But because of Gramm-Rudman, the debt limit extension, and the Republican leadership's opposition to including the textile bill on the reconciliation measure, the Senate has quite frankly missed the boat and not taken action on this measure which contains much-needed revisions to the Tobacco Program.

On several occasions, I have come to the Senate floor in defense of tobacco growers in Tennessee and elsewhere. On July 26, 1985, I made a lengthy statement urging various parties to different tobacco bills to reach an agreement with regard to their different approaches to revisions in the Tobacco Program. More recently I opposed efforts on the reconciliation bill to raise Federal tobacco taxes to 22 cents—a move that would surely drive thousands of Tennessee farmers out of business.

Once again, I would remind my colleagues that tobacco is the sixth largest cash crop in the country. As of 1983, Federal, State, and local tobacco taxes amounted to some $9 billion. Indeed the taxes collected on tobacco were 2½ times the value of the crop that year. The Federal tobacco tax has been raised from 8 cents to 16 cents. Raising tobacco taxes further would drive domestic growers out of business, further increasing the amount of imported tobacco coming into the country—tobacco that simply does not have the quality of the domestic crop. So higher tobacco taxes clearly undermine efforts to make effective changes to the current Tobacco Program. We must avoid this route and develop a compromise measure which reduces the burden of grower assessments under the No Net Cost Program and also encourages major cigarette manufacturers to reduce the current tobacco surplus.

It is now clear that delay may cause as great a hardship to tobacco growers as tax increases. If this body just delays and delays, we could effectively kill the Tobacco Program.

So once again, I would urge my colleagues to complete action on this measure today, immediately appoint conferees and come up with suitable revisions to the No Net Cost Assessment Program. Tobacco growers in Tennessee and elsewhere have supported the No Net Cost Assessment Program in good faith. They expect the Congress to make prudent changes in the program in order to reduce assessments, reduce surpluses, and make American tobacco competitive on world markets. We owe it to them to make these changes so that their tobacco can be marketed and our tobacco farmers can receive a fair price for their product.

We have delayed long enough; we must go forward and make suitable revisions in the Tobacco Program.

Mr. TRIBLE. Mr. President, I rise in opposition to the amendments offered by the Senator from Ohio.

The practical effect of these amendments would be to eliminate the Tobacco Program and that restructuring would be disastrous. It would jeopardize the livelihood of 250,000 farmers dependent on the program.

Moreover, this reform of the Tobacco Program improves the program significantly. It reduce price supports to make American tobacco competitive in world markets. It makes quotas responsive to market conditions and requires manufacturers and exporters to share the cost of the program.

The language contained in this budget reconciliation plan is the result of a year's work. Many long meetings between grower organizations and tobacco companies have led to the development of this plan and this legislation is critical to the long-term, well-being of this important part of the American agricultural industry.

Mr. President, since 1982 when the cigarette excise tax was increased from 8 cents to 16 cents, consumers of tobacco products have borne a heavy tax burden. Last year smokers paid Federal, State, and local governments more than $9 billion in tax revenue. This is nearly three times the amount that our small, struggling tobacco farmers made for their 1984 crop.

So it is the small farmer, whose work contributes so much to the public Treasury who will bear the burden if we adopt these amendments.

Tobacco farmers already have taken more than their fair share of cuts and reductions so that they can preserve their livelihood. Without this legislation, I fear, tobacco farmers easily could lose their unique way of life. I strongly urge my colleagues to oppose these amendments.

Mr. GORTON. Mr. President, I rise today to address a Federal program of dubious virtue. This program perpetuates and assists an industry which produces a product that has led directly or indirectly to the ill health of millions of Americans. It takes 350,000 lives per year and is generally considered a health menace by everyone from the Surgeon General to those who actually choose to use it. I am speaking about tobacco and its protection under the Federal Tobacco Support Program.

I continue to believe, as I have since entering this body 5 years ago, that the Federal Government should not be subsidizing the production or distribution of tobacco or tobacco products in this country. I do not disagree with the right of an adult to choose to smoke after he or she weighs the ramifications of that decision. I do object, however, to the tragically ironic practice of continued Federal expenditures for administering the tobacco program, conducting tobacco research and otherwise assisting in its production, while, at the same time, spending billions of taxpayer dollars to treat Americans who have succumbed to tobacco's choking addiction. We all pay for those who smoke in the form of higher insurance premiums and increased costs to the multi-billion-dollar medicare and medicaid systems.

At some point, I believe that Congress must seriously consider terminating the Federal Tobacco Program altogether. Unlike other federally supported crops, tobacco does not provide an ounce of nutrition to those that consume it. It does not provide for the public welfare. In fact, it does just the opposite—tobacco kills.

I do not, however, harbor any illusions that Congress will terminate the program today or in the near future. Its supporters are great in power, if not great in number. The question we face today is whether it is prudent to authorize the tobacco program as outlined in this bill or to strike it, as the Metzenbaum amendment would, and revisit the tobacco program when the Senate returns to consideration of the farm bill in the weeks ahead.

After careful study, I am convinced that the tobacco program outlined in the reconciliation bill, although imperfect, is the best that can be expected under the circumstances. If we are going to have a tobacco program, onerous though the thought is, we should adopt one which places the smallest burden on the taxpayer and which retains the current 16-cent-per-pack tax. This proposal appears to accomplish that.

The current tobacco program is on the verge of collapse. Tobacco farmers are paying higher and higher assessments to fund the program while Government stockpiles of defaulted tobacco get larger and larger. If the program is to survive, changes must be made, and if changes are made, they should be responsible.

The proposal contained in the reconciliation bill is adequate and certainly an improvement on the current program. It would require cigarette manufacturers to contribute to the cost of the program, reduce the Government loan rate for tobacco, and modify the quota system which dictates how much growers sell each year. The plan also permits the Government to sell off its surplus tobacco at discounts in order to reduce the Federal stockpile.

The Senate proposal is also better than the alternatives which have been offered. The House reconciliation bill contains a provision that would earmark 1 cent of the 16-cent-per-pack tax for the Tobacco Price Support Program. This proposal does nothing to alleviate the woes of the current program and it perpetuates an already intolerable budget situation by spending an additional $1 billion on the program.

Given this scenario, I will support the bill's tobacco package with a minor modification. I believe that the second Metzenbaum amendment, which will ensure that the Government gets a competitive price for its stockpiled tobacco, is sound and should be accepted. Under the bill as reported, tobacco companies would be permitted to purchase existing Government surpluses at noncompetitive fixed rates, in many cases at 90-percent discounts. I believe logic and fairness demand that we make the sale of the Government-owned tobacco competitive. Not doing so raises serious questions.

As modified with the second Metzenbaum amendment, this measure will give the Senate adequate bargaining power in its conference with the House of Representatives and will avoid the acceptance of the completely shortsighted tobacco provisions found in the House bill. Having said that, I must reemphasize my general displeasure with the role that the Government has taken toward the tobacco industry. The costs to the American public are great and the benefits are few. I trust that before too long, this Congress will revisit the tobacco program and decide once and for all that it has no place in the activities of the Federal Government.

Mr. President, I yield the balance of my time to the distinguished President pro tempore.

Mr. THURMOND. Mr. President, I rise in opposition to the pending amendment. Adoption of this amendment would delete from the reconciliation bill a provision included by the Senate Finance Committee which is critically important to the preservation of our domestic tobacco industry.

Mr. President, the Tobacco Program has worked well for many years, successfully fulfilling the goals it was designed to meet. It has made it possible for thousands of small family farmers to remain on the farm. The Tobacco Program, however, has reached a critical point and is in great need of reform.

S. 1418, which Senator HELMS together with myself and others, introduced this past July, addresses and seeks to correct the problems in the current program. That bill was the result of a cooperative, bipartisan effort on the part of tobacco growers, manufacturers, various farmer organizations, Members of Congress, and administration officials.

The section of the reconciliation bill which would be deleted by the pending amendment is almost identical to S. 1418. Like S. 1418, the section of the reconciliation bill the pending amendment would strike proposes a workable Tobacco Program. While not wholly satisfactory to any of the various affected groups, it nevertheless appears to be generally acceptable to all those involved. Deleting this section would jeopardize the survival of the Tobacco Program, as well as the entire tobacco industry.

Mr. President, the tobacco industry is very important to the economy of not only my home State of South Carolina, but of the entire Nation.

Some 2 million jobs, from the farm to the sales counter, depend on the tobacco industry. In 1984, the Federal Government received approximately $5 billion from excise taxes on tobacco products. In addition, State treasuries received $4.5 billion in revenues from tobacco. The tobacco industry also contributes favorably to our balance of payments. In 1983, the United States had a trade surplus in tobacco of approximately $1.8 billion.

Over 200,000 families in 23 States engage in growing and harvesting of tobacco.

Mr. President, in including this section in the reconciliation bill, the Senate Finance Committee recognized the need to preserve our domestic tobacco industry and maintain economic stability in that important sector of our economy. The distinguished majority leader offered the Tobacco program modification section as an amendment during Finance Committee markup of the reconciliation bill. I commend him for his farsighted action, and for his understanding of the tobacco industry.

The program changes that would be accomplished by this section are crucial to the livelihoods of thousands of small tobacco farmers and their families. I urge my colleagues to oppose the amendment.

Mr. President, personally, I do not smoke. But just like some people are going to use alcohol, some are going to use tobacco. Mr. President, I hope that this amendment will be defeated.

Mr. GORE. Mr. President, I rise in opposition to the amendment to strike the tobacco provisions from the reconciliation bill. This debate today represents the culmination of months of discussion and compromise in the tobacco community. There have been sharp differences of opinion over the best way to reform the Tobacco Program in order to preserve it in a form beneficial to growers. Many Senators on both sides of the aisle deserve credit for the time and effort that they have invested in trying to resolve the seemingly intractable problems facing the Tobacco Program.

The political reality has been clear to me for many months that in order to preserve the Tobacco Program it would be necessary to maintain the cigarette excise tax at 16 cents per pack. Significantly, in Tennessee, where over 90,000 families participate in the Tobacco Program, my constituents have recognized this political reality as well. And I am glad that the chairman of the Agriculture Committee and the senior Senator from Kentucky have accepted this reality. Their acceptance of the inevitability of maintaining the cigarette tax at 16 cents has made it possible for the Congress to pass legislation reforming the Tobacco Program so that it continues to benefit tobacco growers.

Under this bill, which continuation of the 16-cent tax has made possible, we will be able to dispose of the gigantic tobacco surpluses that currently threaten the future of the Tobacco Program. We will also make structural changes in the Tobacco Program, including lowering the support price substantially and requiring tobacco growers and cigarette manufacturers to share equally in the future cost of the program.

Their acceptance of the 16-cent tax was an act of political courage and statesmanship. And because of the merger of the 16-cent tax and Tobacco Program reform legislation, a merger that I have advocated since early this year, we now have a good chance of salvaging the Tobacco Price Support Program. If the pending amendment is defeated, as I believe it should be, and the Senate passes this legislation reforming the Tobacco Program, we still face the challenge of reconciling this language with different language that is in the House bill.

As many of my colleagues know, I supported an alternative to the provisions in the bill before us, but I believe that the Senate bill offers a workable framework for preserving the Tobacco Program. I would take this opportunity to urge everyone in the "tobacco family" to seek a constructive accommodation of the varying concerns and interests that are reflected in the Senate bill and the bill in the other body.

The stakes for tobacco growers in Tennessee and 16 other States are very, very high—too high for us to let this opportunity slip away.

The PRESIDING OFFICER. All the time has expired.

Mr. METZENBAUM. Mr. President, does the Senator from Ohio have 3 minutes remaining?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, the administration, according to the letter written to Senator DOMENICI from the OMB:

> Strongly opposes the permanent changes made to the tobacco program which will force the U.S. Government to sell its existing stocks of tobacco at sharply discounted prices. This latter provision will cost the taxpayer more than $1 billion over the next 5 to 8 years.

Now, this matter has been described as eliminating the tobacco program. It was so described by the Senator from North Carolina, as well as the Senator from Kentucky. That is hogwash. It does not eliminate the tobacco program at all.

What it does, it eliminates this particular tobacco program from the budget reconciliation matter, but the legislation that has been in effect for years will continue to be in effect. But what we are told is that if you do not pass this, the big cigarette companies—four of them—are not going to be willing to buy the tobacco that is in storage. And we want to sell them that tobacco at 10 cents on a dollar.

Bring out your tears and cry a little bit for the big tobacco companies of this country, while millions of Americans—and their cases are right now being decided——

Mr. FORD. Will the Senator yield?

Mr. METZENBAUM. I will not yield.

Mr. FORD. You used the name of the Senator from Kentucky.

Mr. METZENBAUM. Mr. President, regular order. I have the floor and I do not intend to yield the floor.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. METZENBAUM. What we are talking about is selling tobacco for 10 cents on the dollar to the big tobacco companies. And they are going to combine together, collusively—that is the bill. They are permitted to do it so that no one bids 11 cents a pound or 12 cents a pound.

Now, the real question to all the budget balancers is: Are you prepared to give away $1,100,000,000 to the tobacco companies of this country?

The argument is made that this is for the tobacco farmer. I do not buy it. This is for the cigarette companies. They are the ones that are going to gain when we pass this legislation. This proposal does not belong in the Budget Reconciliation Act. It ought to be debated freely and openly as part of the agriculture bill. It cannot stand on its own there, so they put it in the Budget Reconciliation Act. It should not be there. We ought to take it out and then they could come back to it when we get back to the farm bill and debate it openly and fairly without any limited debate.

Mr. President, I am prepared to vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, is there any time remaining?

The PRESIDING OFFICER. All time has expired.

Mr. DOLE. Mr. President, as one who believes in saving money, and this will save $235 million over 3 years, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas [Mr. DOLE] to table the amendment of the Senator from Ohio [Mr. METZENBAUM]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER. (Mr. ARMSTRONG). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 66, nays 33, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—66

Abdnor	Gorton	Melcher
Andrews	Gramm	Murkowski
Armstrong	Grassley	Nickles
Bentsen	Harkin	Nunn
Boren	Hawkins	Packwood
Boschwitz	Hecht	Pressler
Bumpers	Heflin	Pryor
Byrd	Heinz	Quayle
Cochran	Helms	Rockefeller
Cranston	Hollings	Rudman
D'Amato	Humphrey	Sasser
Danforth	Inouye	Simpson
DeConcini	Johnston	Stennis
Denton	Kassebaum	Stevens
Dole	Kennedy	Symms
Domenici	Laxalt	Thurmond
East	Long	Trible
Evans	Lugar	Wallop
Exon	Matsunaga	Warner
Ford	Mattingly	Weicker
Goldwater	McClure	Wilson
Gore	McConnell	Zorinsky

NAYS—33

Baucus	Garn	Metzenbaum
Biden	Glenn	Mitchell
Bingaman	Hart	Moynihan
Bradley	Hatch	Pell
Burdick	Hatfield	Proxmire
Chafee	Kasten	Riegle
Cohen	Kerry	Roth
Dixon	Lautenberg	Sarbanes
Dodd	Leahy	Simon
Durenberger	Levin	Specter
Eagleton	Mathias	Stafford

NOT VOTING—1

Chiles

So the motion was agreed to.

Mr. HELMS. I move to reconsider the vote by which the motion was agreed to, Mr. President.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I want to alert my colleagues, since there are many on the floor, that there are still six amendments pending. If all the time is consumed and there are no intervening quorum calls and we have rollcall votes on each—which I hope will not be necessary—we will be on this bill another 2½ hours. Following that, we want to take up the Overseas Private Investment Corporation and the Compact of Free Association. If we can do all that by 8 or 9 tonight, we will not be in tomorrow.

I may be constrained to hold off another 30 to 35 minutes to see if we can get an agreement on the Compact of Free Association. If not, we will put it over until tomorrow and start at 9 o'clock.

AMENDMENT NO. 1045

(Purpose: To modify the provisions relating to the purchase of inventory stock of certain tobacco crops)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1045.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 404, line 16, strike out "Notwithstanding" and insert in lieu thereof "Except as provided in subsection (E), notwithstanding

On page 406, line 2, after "reduced by" insert "an amount not greater than".

On page 406, line 13, after "sale at" insert "a price no less than".

On page 406, line 16, after "sale at" insert "a price no less than".

On page 407, line 5, after "sale at" insert "a price no less than".

On page 407, strike out line 16 and all that follows through line 16 on page 411.

On page 412, strike out lines 12 through 17 and insert in lieu thereof the following new subsection:

"(E) Nothing in this section shall be construed as declaring any actions otherwise prohibited by the Sherman Act, the Clayton Act, or the Federal Trade Commission Act, as being legal.

Mr. METZENBAUM. Mr. President, would the Chair be good enough to advise me what are the time limits in connection with this amendment?

The PRESIDING OFFICER. Under the previous order, there will be 10 minutes to a side.

Mr. METZENBAUM. Mr. President, I yield myself 6 minutes.

First, Mr. President, I ask unanimous consent that time not be counted and the Senate be called to order.

The PRESIDING OFFICER. The point of order of the Senator is well taken. The Senate is not in order. The Senate will be in order.

The Senator from Ohio may proceed.

Mr. METZENBAUM. Mr. President, the previous amendment dealt with removing all other provisions having to do with tobacco from the budget reconciliation measure. This amendment is much more limited. This deals with the fact that the proposal before us in the bill provides an exemption from the antitrust laws for four tobacco companies. Pure and simple, that is all this proposal is: It is an exemption from the antitrust laws for four tobacco companies. Our amendment specifically provides that the tobacco companies will be subject to the Clayton Act and the Sherman Antitrust Act and other acts of a similar nature.

What we are talking about also is the fact that, under the legislation, the tobacco companies would be permitted to get together, they provide for an allocation of the market. If one company has 20 percent of the market, another gets 50, another gets 10 and another 20, then each of them agrees that they get that much of the tobacco that is in storage at 10 cents on the dollar.

I make it clear, Mr. President, the bill fixes the price. It is not what they will bid for, which is what I would want them to have an opportunity to do; it is the American way, that you pay whatever fair market conditions are. This is pure and simple socialism in favor of the four big tobacco companies. I cannot, for the life of me, understand how any Member of this body can vote for socialism for the cigarette companies and be so strongly against it when they are on the public platform. The bill as it stands is a blatant license to violate the antitrust laws of this country. It provides by law for a 90-percent discount. It allocates to the companies on the basis of their respective market share that tobacco that is in storage at 10 cents on the dollar.

What do we gain for agriculture by saying that for agriculture, we are going to have this special arrangement that can get this kind of advantage? We do not do anything like this in the field of wheat or soy, or any of the other commodities—sugar, milk—but for tobacco, the four tobacco companies agree that they will buy it at 10 cents on the dollar.

All my amendment does is leave the provisions in just as they are, but it deletes the price fixing, deletes the allocation based on market share, and states that the antitrust laws apply.

I am told the tobacco companies do not like this amendment. Well, that is too bad; I did not expect that the tobacco companies would like this amendment. But if the American people knew what is going on on the floor of the Senate this afternoon, I have no doubt in my mind that it would not be a matter of 70–30 saying that the tobacco companies ought to be subjected to the antitrust laws and have to bid competitively; the overwhelming 95, 98, 100 percent of the people of America would say that this amendment should be supported.

The cigarette manufacturers of this country should not be given a special exemption from the antitrust laws. I hope the Senate will see fit to adopt the amendment this afternoon, Mr. President.

I yield back the remainder of my time.

Mr. BOSCHWITZ. Mr. President, will the Senator yield for a question?

Mr. METZENBAUM. On the Senator's time, Mr. President.

The PRESIDING OFFICER. The Senator from Minnesota has no time.

Mr. GORTON. Mr. President, I yield control over the time in opposition to the amendment to the Senator from North Carolina.

Mr. HELMS. Mr. President, I thank my colleague.

I yield 1 minute to the Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I must tell the Senator from Ohio and the Senator from North Carolina that I am inclined to vote for the second amendment of the Senator from Ohio.

I would like to know if this tobacco has been offered to these companies before at this price that they are now being mandated to buy it for.

Mr. METZENBAUM. This surplus has been around for a long time. It is my understanding that it has been offered to the tobacco companies and

under the bill, the prospective buyers will have 90 days after the bill is enacted to buy whatever they want.

The answer then is it has been offered to them. They are not satisfied to buy it on the basis of market conditions or on the basis of some other price, but are insisting on buying it at 10 cents on the dollar.

Mr. BOSCHWITZ. It is my understanding that they must buy it under this provision. Am I correct?

Mr. METZENBAUM. I think that is arguable. I do not think there is anything specific that I am familiar with that provides they must buy it because you do not name the tobacco companies. And I do not see how we could by legislation—as a matter of fact, it is pointed out by my staff that on page 407 it specifically provides that "each domestic manufacturer of cigarettes may enter into agreements to purchase inventory stocks of flue-cured and burley tobacco" until inventory stops.

The PRESIDING OFFICER. The time yielded by the Senator from North Carolina to the Senator from Minnesota has expired.

Mr. HELMS. Mr. President, the distinguished Senator from Ohio—and he is my friend; I like him—is confused or getting bad advice. There is no tobacco proposed to be sold for 10 cents on the dollar, none. Because of the attached conditions that a purchaser must buy 2 pounds of the 1982-84 crop at a value more than it is actually worth, there is no company giveaway. I know it is popular and it is sometimes effective to use the bugaboo of the companies, but let me tell the Senator something. I had the toughest time with the tobacco companies, bringing them into agreement with this legislation, so please do not burden us with all of this malarkey about a bailout or a windfall for the tobacco companies because it simply is not so.

Mr. METZENBAUM. Mr. President——

Mr. HELMS. I did not interrupt the Senator. I ask him to forbear.

Now, let me say to my friends, this is like a little boy who had just caught a fish. The fish was wiggling in his hand, and he said, "Hold still, little fish. I am not going to hurt you. I am just going to gut you."

Now, what the distinguished Senator from Ohio wants to do is gut a program that is the livelihood of 100,000 farmers, maybe more.

Now, I said before and I say again that we painfully, arduously produced this bill after over 100 meetings so that we would get the support price down below the market price. I am amazed that the Senator from Ohio would be opposed to that. I cannot believe the position that he is taking.

I do not know whether other Senators want time or not.

Mr. FORD. Mr. President.

Mr. HELMS. I yield to the Senator from Kentucky such time as he may desire.

Mr. FORD. Mr. President, we have heard a lot about OMB and the business of tobacco from the distinguished Senator from Ohio, but the Tobacco Program is complex, to say the least. The business is one of the oldest in the world and international in scope.

Since when did OMB become an expert in the tobacco trade? Does OMB know the difference between a B-34 or X-1L grade? Does it know that there are over 120 grades of burley and 140 grades of Flue-cured? We all know that OMB has enough trouble presiding over the basics, so how in the world can this body put any credibility in what OMB has done? When was the last time OMB gave us a figure that was correct? You check back and see how many times they have been correct.

Mr. President, let me give you this fact. The sale of the 1982 crop—I am talking about burley now—will result in about a $25 million profit to the farm cooperatives that is put into the no-net-cost fund. I cannot understand why the Senator from Ohio would have an objection to selling something for a profit. He is objecting to that and wants to take it out of the bill.

The 1984 crop will be sold at no loss to the Government. It will be sold at the farmers' cost plus all carrying charges. A phone call today by any Member of this body offering the exact same amount, same terms contained in this bill will buy every leaf, every leaf, in the 1984 burley tobacco crop.

Again, I cannot understand the objections of selling tobacco from the 1984 crop at no loss to the Government. That is what it is all about—no loss to the Government.

The third provision of this bill deals with the 1983 crop. I want my colleagues to listen and listen closely to this. My colleague from Ohio sent around a memorandum that insinuated the cigarette manufacturers would be getting a windfall in cheap tobacco from this bill. Nothing could be further from the truth. First, the 1982 crop of burley will be sold at a profit. Second, the 1984 crop will be sold at the total cost to the cooperative carrying the charges. Third, the 1983 burley crop is not being sold to cigarette manufacturers, as the memorandum from my friend from Ohio indicated. That is absolutely wrong. The 1983 crop is to be offered for sale on a competitive bid basis to anyone in the world who wants to bid on it. And now the Senator is trying to say we are going to give it to them at 10 cents on the dollar. He is absolutely wrong. Instead, the farmers of our States are going to pay every single dollar that they themselves have contributed to the no-net-cost account, $135 million out of the farmers' pocket to keep this Tobacco Program whole.

The farmers themselves have paid to reduce the 1983 crop with the hopes of selling it in the world market. So we get around to all of these corrections of this 10 cents on a dollar. We need to do whatever we can to save this program and to blow away the smoke of the inaccuracies that we have been hearing as they relate to a program that is very dear to my State.

I yield the floor, Mr. President.

Mr. HELMS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator from Ohio has 5 minutes remaining. The Senator from North Carolina has 4 minutes remaining.

Mr. HELMS. Mr. President, I reserve the remainder of my time.

Mr. BOSCHWITZ. Mr. President, may I ask one of the tobacco State Senators a question?

Mr. FORD. Not on my time. I do not have any. The Senator has some time.

Mr. HELMS. I will yield for a question.

Mr. BOSCHWITZ. Mr. President, I would like to know, is it not true that the tobacco companies have been offered this tobacco at the price that it is now?

Mr. HELMS. That is correct.

Mr. BOSCHWITZ. And that they have not bought it?

Mr. HELMS. That is correct. And that abolishes the argument about a giveway to the tobacco companies. I thank the Senator for asking the question.

Mr. BOSCHWITZ. This bill, as I understand it, makes them buy it?

Mr. HELMS. While the bill does not require them to participate in the buyout program, in it is a formula which as a practical matter, would result in their having to buy the tobacco if they participate in the program. Yes.

Mr. BOSCHWITZ. So in fact it clears out the inventory?

Mr. HELMS. Exactly.

Mr. BOSCHWITZ. I say to my friend from Kentucky, I do not know about 120 different types of tobacco but if he talks about winter wheat, or durum wheat, or spring wheat, I am better at that.

Mr. HELMS. I reserve the remainder of my time, Mr. President.

Mr. METZENBAUM. Mr. President, the Senator from Ohio may be confused according to the Senator from North Carolina, but I am not confused about the English language. The English language provides in this bill that "the stocks of flue-cured tobacco in the 1976 through 1984 crops shall be offered for sale at the base prices including carrying charges in effect as of the date of the offer, reduced by 90 percent for flue-cured tobacco from the 1976 through 1981 crops." Now, there is nothing very confusing about that.

There is another provision in the bill that talks about the fact that the market share will be allocated on the basis of what they have at the present time. The four companies that are going to get this tobacco make up over 90 percent of the market.

When my friend from Minnesota says they have been offered it at this price and have not bought it, I want him to understand that that is not the fact, because why would they be in here importuning us, telling us that only with this provision in the bill will they be willing to buy it? Since when did they become eleemosynary institutions? They are here because they have got a great chance to buy it—steal it—from the American people. And when I say "steal it from the American people," I use terms advisedly because the Office of Management and Budget, which we do respect around here, says as follows:

Although these provisions state that one of the goals is to maintain the no net cost to the taxpayer tobacco program, in reality the bill imposes significant costs on the taxpayer. This legislation provides for the complete disposal of all stocks of burley and flue-cured tobacco at substantial discounts. The Government would lose $1.1 billion as a result of being forced—

forced—

to sell its stock at prices significantly below prevailing market prices without reimbursement from tobacco producers or cigarette manufacturers.

So when the Senator from North Carolina talks about being confused, read the bill. He wrote it. He is the one who is the author of it. The language provides specifically that the four companies are going to be able to buy it at 10 cents on the dollar, a 90-percent reduction. Now, there is nothing in here that prevents the four companies, if they want to buy it for more, from doing that, if we do not enact this law.

If we do enact this into law, if it remains in the bill, there is not a snowball's chance is Hades that any of them will pay any more than 10 cents on a dollar. That is the reason why it is important that we make the antitrust laws applicable.

Why would anybody come before this body and suggest that the antitrust laws of this country be vitiated, made void, so far as the four tobacco companies are concerned, so that they may pay 10 cents on a dollar instead of a fair competitive price?

I am not saying that they should pay 100 cents on the dollar. I am saying, let them have an opportunity to compete freely and competitively. That is the American way and that is not the way provided in this bill.

Mr. President, I reserve the remainder of my time.

Mr. THURMOND. Mr. President, I wish to add my support to the tobacco program improvements portion of the bill and to address the antitrust implications of the legislation.

Mr. President, in January of this year, the Flue-Cured Tobacco Cooperative Stabilization Corporation sought and received from the Department of Justice a business review letter concerning the cooperative's plan to sell its surplus tobacco to the domestic cigarette manufacturers. The Justice Department's Antitrust Division issues such business review letters upon request, in order to inform parties of the present prosecutorial intention of the Department with respect to conduct being considered by those parties. If the Department finds nothing anticompetitive about the conduct being submitted for review, it indicates to the parties making the request that it would not bring antitrust enforcement action if the parties engage in that conduct. That is what the Department said about the cooperative's plan to sell its surplus stock of tobacco. The Justice Department reviewed all of the underlying facts and found no evidence that the plan to sell the cooperative's inventories in the manner described in this bill was the product of any kind of agreement among cigarette manufacturers. Accordingly, the Department indicated that it has no present intention of challenging the offer of the inventory to the cigarette manufacturers, on antitrust grounds or any other grounds. In its letter, the Department of Justice noted that the sale of this inventory of tobacco in this manner is in the best interests of the members of the cooperative.

Mr. President, this business review letter provides protection to the cigarette manufacturers from Government antitrust prosecution, but it is not binding on any private plaintiffs who might attempt to sue the cigarette manufacturers on antitrust grounds for participating in this sale of inventories, which is so vital to the survival of the tobacco price support program. Therefore, provisions have been made in this bill to assure the cigarette manufacturers that they do not risk private antitrust challenges for participating in this sale. This assurance is necessary in order to encourage the participation of the tobacco companies in this buyout plan, because it cannot work without them.

Mr. President, to confer this minimal, one-time antitrust protection is not too great a price to pay in order to salvage the tobacco price support program. Indeed, it gives very little, if anything, away, since the Department of Justice finds no reason to decline to confer one-time antitrust protection on this transaction. Furthermore, to provide these private parties with antitrust protection in this manner is consistent with other cases in which collective action by private parties was necessary, and is consistent with the treatment of competition issues in the agricultural sector. For example, Congress has given the Department of Agriculture broad latitude to determine the applicability of the antitrust laws to agricultural marketing. The implementation of agricultural policy has, from time to time, involved regulation of markets, and restriction of competition, to the extent necessary to achieve agricultural policy goals. Such is the case here. To the extent necessary, this bill confers a minimum amount of implicit assurance about antitrust liability on private parties whose participation is required to make this plan succeed. This assurance is no broader in scope than that already given by the Justice Department. I find this modest extension of antitrust protection wholly appropriate, completely necessary, properly limited, and perfectly consistent with agricultural and antitrust policy.

Mr. President, I strongly support this effort to restore the tobacco price support program to a stable condition.

Mr. President, I ask unanimous consent that a letter from the Department of Justice to the Tobacco Cooperative Stabilization Corporation be included in the RECORD following these remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION,
Washington, DC, January 23, 1985.

MR. FRED G. BOND,
General Manager, Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, NC.

DEAR MR. BOND: This letter responds to your request dated January 9, 1985, for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's present enforcement intentions with respect to a plan of the Flue-Cured Tobacco Cooperative Stabilization Corporation ("the cooperative") to offer for sale its entire inventory stock of flue-cured tobacco to United States cigarette manufacturers.

We understand that all domestic growers of flue-cured tobacco, which is grown in a five-state area covering Virginia, North Carolina, South Carolina, Georgia and Florida, are members of the cooperative. The cooperative, by contract with the Commodity Credit Corporation, administers the tobacco loan program of the United States Department of Agriculture ("USDA"). Under the program, tobacco not purchased on the open market at or above the government support price is automatically consigned to the cooperative, and the grower is paid the support price. Pursuant to the No Net Cost Tobacco Program Act of 1982, should losses be incurred upon the sale of tobacco held by the cooperative, they are borne by the growers. Accordingly, an assessment upon each pound of tobacco consigned to the cooperative is levied against the growers and used for a reserve fund to cover losses and carrying charges for tobacco inventory.

You have told us that inventory stocks held by the cooperative have risen dramatically in the recent past. This is because the government support price is currently about $1.70 per pound, which is higher than the world price of tobacco. Thus, the cooperative is holding a great deal of surplus tobacco and paying very significant carrying charges. Sale of the surplus at a price lower than the support price, as contemplated by the cooperative, will eliminate the high carrying charges presently borne by the tobacco growers and will, in turn, significantly lower the 1985 assessment required by the No Net Cost Act.

We understand the cooperative's plan to be as follows. The cooperative will meet individually with the six domestic cigarette manufacturers in an attempt to sell them a pro rata portion of the tobacco inventory, based upon their respective shares of the domestic cigarette market. The cooperative

will attempt to negotiate with the manufacturers separately to establish a price for the inventory. Its willingness to offer the tobacco at a price lower than the support price will be contingent upon its ability to dispose of the entire stock. You believe that it will be necessary to sell the tobacco to the cigarette manufacturers at the same price to each, and we understand that the cooperative's decision to sell its inventory at a uniform price was reached unilaterally.

After discussing the proposal with you and consulting with USDA about the tobacco program, and absent any evidence that the program is a product of any agreement among cigarette manufacturers, we have concluded that the Department has no present intention of challenging your offer of the inventory to the cigarette manufacturers. This conclusion is based upon your representations that you have decided that disposal of the inventory in its entirety is in the best interest of your members and that the cooperative is most likely to achieve its goal if it offers the inventory for sale at the same price to all of the manufacturers.

Pursuant to 28 C.F.R. § 50.6, this letter and your business review request will be made publicly available immediately and its supporting materials will be made publicly available within 30 days of the date of this letter, unless you request that any part of the material you submitted be withheld in accordance with paragraph 10(c) of the business review procedure.

Sincerely,

J. PAUL MCGRATH,
Assistant Attorney General,
Antitrust Division.

The PRESIDING OFFICER. If neither side yields time, the time is charged equally against both sides.

Mr. METZENBAUM. Mr. President, I am prepared to yield back my time, if the Senator from North Carolina is prepared to yield back his time.

Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. METZENBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, if Senator METZENBAUM is willing to yield back his time, I will yield back mine.

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. All time is yielded back.

Mr. DOLE. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader to table the amendment of the Senator from Ohio. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 42, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—57

Abdnor	Gore	McConnell
Andrews	Gramm	Melcher
Armstrong	Grassley	Murkowski
Bentsen	Hawkins	Nunn
Boren	Hecht	Packwood
Boschwitz	Heflin	Pressler
Byrd	Heinz	Pryor
Cochran	Helms	Quayle
Cranston	Hollings	Rockefeller
D'Amato	Humphrey	Rudman
Danforth	Inouye	Sasser
DeConcini	Johnston	Stennis
Denton	Kassebaum	Stevens
Dole	Laxalt	Symms
Domenici	Long	Thurmond
East	Lugar	Trible
Exon	Matsunaga	Wallop
Ford	Mattingly	Warner
Goldwater	McClure	Wilson

NAYS—42

Baucus	Glenn	Mitchell
Biden	Gorton	Moynihan
Bingaman	Harkin	Nickles
Bradley	Hart	Pell
Bumpers	Hatch	Proxmire
Burdick	Hatfield	Riegle
Chafee	Kasten	Roth
Cohen	Kennedy	Sarbanes
Dixon	Kerry	Simon
Dodd	Lautenberg	Simpson
Durenberger	Leahy	Specter
Eagleton	Levin	Stafford
Evans	Mathias	Weicker
Garn	Metzenbaum	Zorinsky

NOT VOTING—1

Chiles

So the motion to table the amendment (No. 1045) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1046

(Purpose: To limit the power of the Secretary of Health and Human Services to exercise the new authority granted by this act until the Secretary treats liver transplants as a procedure which is not experimental and pays for such procedures when reasonable and medically necessary under title XVIII of the Social Security Act)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. WARNER). The clerk will report. The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] for himself, Mr. GORE, and Mr. SASSER, proposes an amendment numbered 1046.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 180, between lines 13 and 14, insert the following:

SEC. 724A. COVERAGE OF LIVER TRANSPLANTS.

(a) The Secretary may not exercise any of the new authority granted by this title until the Secretary using his existing authority has issued regulations stating that for purposes of title XVIII of the Social Security Act, a liver transplant shall not be considered to be an experimental procedure, and shall be covered under such title when reasonable and medically necessary, as determined on a case-by-case basis.

Mr. BUMPERS. Mr. President, I only have 5 minutes to debate this so if the Senators would please give me your attention for just about 2 or 3 minutes. This is a very simple, straightforward amendment. Right now, the Medicare system will only pay for liver transplants for those beneficiaries who are under 18 years of age. This amendment says that the Secretary, under the authority she already possesses, shall not declare people on Medicare ineligible for transplants simply because they are over 18. In other words, the Secretary will not consider liver transplants for those over 18 years of age as a medically experimental procedure.

Now, I have done some extrapolations. Last year, we had 308 liver transplants in the country. That's 308 transplants from a pool of 235 million people. If you take the number of people who are on Medicare disability who would be eligible under my amendment—and actually all of them would not be because you are talking about people roughly between the ages of 18 and 54—you would be talking about significantly smaller pool and a lot fewer than 308 transplants. You are talking about roughly, I would say, a handful of individuals in the country who would qualify under my amendment.

The cost of a liver transplant in this country runs from $135,000 to $238,000. So you are probably talking about a cost of $1 to $3 million, considering the current transplant system. I recognize that the whole issue of financing transplants is becoming a greater problem in this country. We are going to have to debate this issue in the Finance Committee and on this floor if we are going to determine how much we are willing to pay to save people with heart transplants, liver transplants, and other transplant procedures.

Incidentally, Medicare now pays for kidney transplants, it now pays for cornea transplants, and it now pays for liver transplants if you are under 18. But for the roughly dozen people a year who could get an organ and who could be saved, this amendment is literally a lifesaver. You have that many people in this country who now stand under a death sentence.

It is just that simple. If we are going to be a sensible society, a sane society, a society sensitive to the worth of every individual, we cannot vote no on this amendment.

Mr. President, I reserve the remainder of my time.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Arkansas has 7 minutes, 41 seconds.

Mr. BUMPERS. I yield 3 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, I encourage every Member of this body to support the amendment of the Senator from Arkansas. Liver transplants should be treated just as any other life-saving medical treatment. They should not be singled out for special consideration.

Let me give my colleagues a little history of what this issue is about. On February 9, 1984, the administration made an announcement that they would, for the first time, allow coverage under Medicare for liver transplants, but there was a hook in the announcement. They said the coverage will only be available for children under the age of 18 with biliary atresia. Why did they put that condition on their announcement? There were two reasons; and both of these will sound a little cynical, but I am convinced, I will tell my colleagues, that they are the correct reasons for the announcement.

No. 1, very few, if any, people under 18 are eligible for Medicare coverage. No. 2, those getting the most publicity on the subject of liver transplants were young children with biliary atresia. Is there any medical justification for the distinction between below 18 and over 18? The answer is no, and in saying so I am only echoing the conclusions reached by the NIH expert panel charged with reviewing this issue.

I had an amendment passed in the other body 2 years ago requiring CHAMPUS to reimburse for liver transplants and requiring them to follow the NIH guidelines until Medicare's decision was announced. When Medicare made their announcement restricting it to people under 18, the medical experts at CHAMPUS were aghast. They said, "What possible scientific justification is there for it?" And there was none. And, to their credit, CHAMPUS has continued to this day abiding by the NIH guidelines by covering those over 18 as well. Medicare should also abide by the NIH guidelines.

Some will say the Congress should not mandate this kind of behavior on the part of Medicare. In an ideal world, that would be true. In an ideal world, Medicare and the administration would make a sensible judgment on this matter. But if they are determined not to make a sensible judgment, then we ought to make the judgment for them. And make no mistake about it, lives are at stake.

And those over 18 who can have their lives saved as a result of this treatment are denied it because of an improper bureaucratic decision that is just flat wrong and that would be overturned by the amendment of the Senator from Arkansas.

I urge support for the amendment.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I yield myself 2 minutes. I will yield most of the time to a member of the committee.

Mr. President, the argument that the distinguished Senators make with reference to this is really preposterous. Is this Senate going to really believe that the Finance Committee—they all know the members—would fail to address this problem if it were as clear as the proponents would have us believe? The Finance Committee is down here every week amending Medicare to do something Medicare ought to do. We just approved a $225 million Medicare and Medicaid change for those people who are dependent on ventilators to breathe. The supporters of this amendment know this. The committee knows the issues that have been raised.

The truth of the matter is that we are not ready for this. There is a formal study that the Naitonal Institutes of Health which has not completed. The reason the Department of Health and Human Services limited the coverage of transplants to individuals under 18 is because they know enough about the success of this operation for younger persons but not enough about its success on older persons.

They are waiting to explore whether these transplants should remain exploratory or whether we ought to cover it as an ongoing illness. The estimated cost is pretty meager. One estimate is $125 million a year. We have not yet had the experts tell us we ought to do it.

Frankly, on a reconciliation bill, the Finance Committee has changed 40 provisions in Medicare to take care of changes in health care practices. Why have they not done this one?

Clearly, there is a justification. It is not because they want to deny something to somebody. It is not because they are callous. It is because there has been an ongoing study of how do we handle these kinds of expensive experimental operations.

I want to yield to the subcommitte chairman who is here. He would like to explain it from the Finance Committee side. When we are finished, I will ask the Senate to table this matter.

Mr. GORE. Will the Senator yield first?

Mr. DOMENICI. I have very little time, Senator. I wanted to yield to the Senator from Minnesota to explain it.

If I have time left, I will yield to the Senator or answer a question on the Senator's time, whichever the Senator prefers.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I am going to be brief, and I am going to start with my compliment to my colleagues from Arkansas and Tennessee. Both of them have been at this subject longer than I, especially the Senator from Tennessee, and are totally committed to what it, and to what they are proposing today.

I feel a little uncomfortable standing up here and listening to the chairman of the Budget Committee and my associates on the Finance Committee say that we have been guilty of doing an awful lot of legislating on this bill. It is absolutely true.

I have told my caucus—I make no bones about saying it here—that I will be back next year doing the same thing because it seems to be the only vehicle that will roll through this Chamber.

If we are going to provide for quality health care of the people of this country, this is the only place to do it. The issue now from my perspective, is simply not, whether or not, this is the place to do this but whether this is the appropriate time to remove liver transplants from the experimental category under Medicare.

The Department of HHS, as one of the Senators indicated earlier, did remove from the experimental category persons under 18 years of age. I do not know whether I would characterize that act as cynical as someone just did, or whether or not I should take their word for it. I do take their word for the fact there is a clear demonstration this procedure is effective with children. That is very clear.

So I think when they say it is not experimental under 18, they mean it. There is some doubt about it in older populations. It is for that reason that the National Institutes of Health study is analyzing that part of the problem.

It is for that reason that the Finance Committee has not made this recommendation yet.

The other problem—I suggest so the Senator from Arkansas can clarify this—is that his amendment removes everyone from the experimental stage. Yet, he indicates to us it is only a $1 million cost. That cannot be. The amendment does eliminate everyone 18 and over. It does not restrict it to the disability insured population. Therefore, the estimates that I have been given of $35 million per year according to CBO, and in excess of $125 million from the administration, which you might expect a larger amount, I think—are more appropriate to this amendment than the $1

million estimate given to us by the Senator from Arkansas.

So I rise reluctantly, Mr. President, to oppose this amendment.

Mr. BUMPERS. Will the Senator yield for a question? What on Earth is the basis? What is the basis for the $35 million figure?

Mr. DURENBERGER. I am informed that is the eligible population 18 years of age and older, not restricted to that small 2.8 million in the population.

Mr. BUMPERS. Who else would Medicare pay for?

Mr. DURENBERGER. Medicare would pay for all the elderly for example.

Mr. BUMPERS. Nobody else is eligible for Medicare unless he is over 65, and transplant surgeons are not performing liver transplants on people over 50 to 54. There are only 2.8 million disabled individuals on Medicare, and that's really the pool we're talking about. That's who would be eligible for liver transplants under this amendment.

Mr. DURENBERGER. I have been given to understand that the CBO estimate is premised on in excess of 300 persons in the SSI population.

Mr. BUMPERS. That was the total number, Senator; 308 was the total number of liver transplants done in this country last year; 308 transplants out of a total population of over 200 million.

Mr. DURENBERGER. Let me clarify. They say there are 4,000 persons who are eligible in that population category, and approximately 300 who would volunteer for the transplant process. That is from CBO. I cannot confirm it.

Mr. BUMPERS. Mr. President, I yield 1 minute to the Senator from Tennessee.

Mr. GORE. I wish we had more time to clear up some of the misinformation of this subject. I really do. It is so frustrating. For one thing there is no ongoing NIH study on this subject. The Senator from New Mexico said there was. I am sure he has been informed of that fact. But that is wrong.

There was an NIH Consensus Development Conference in 1983 on this subject, and they concluded there is no basis whatsoever for making the distinction below 18 as opposed to above 18.

The administration insists on this sham of describing this operation for people above 18 as experimental.

Why is it a sham? Do you know what the survival rate is? Seventy percent. What is experimental about a survival rate of 70 percent? The 4,000 figure that was given is the total population of all potential liver transplant patients in the entire country.

The Senator from Arkansas is talking about a subgroup in the disability population eligible for Medicare on that criterion. That is a very small number. The cost is probably going to be $3 or $4 million. It could go as high as $5 million at an absolute maximum.

What we are talking about here is people whose lives are in danger, whose lives could be saved with a medical treatment carefully developed over many years at taxpayer expense, but the U.S. Government is telling them a lie. They are telling them this procedure which will save your life with a 70-percent chance of success is experimental. That is a lie. It is a sham. If we do not act, we can kill them.

The PRESIDING OFFICER. The Senator's minute has expired.

The Senator from Arkansas has 2 minutes. The Senator from New Mexico has 3 minutes and 38 seconds.

Mr. BUMPERS. Mr. President, according to a study on liver transplantation by Battelle Human Affairs Research Center, one of the most prestigious medical research centers in the United States, there are approximately 2,000 people in this country between 15 and 54 who would benefit from a liver transplant. If we go a step further and determine who within this group of 2,000 would be eligible under Medicare, we'd probably find 150. And considering the current transplant system and availability of organs, probably no more than 15 would be eligible annually. And 15 people a year might well be an exaggeration.

I admit these figures are rather crude, but that 15 is probably an exaggeration. But if this body votes this afternoon to save 15 lives at a cost of $3 million, it would be the best day's work we ever did here.

If we stand around here and debate this next year, as the Senator from Minnesota has said, a lot of people are going to be dead in the meantime.

The Senator from New Mexico says, "We are not ready."

I invite him to call a distraught mother in my State and explain to her what her daughter is supposed to do when one of the finest facilities in this country said, "We will do this for you and we will put you on our list, which already has 18 on it, but before we do, you have to come up with $160,000."

Call her and tell her what we are doing here in the U.S. Senate, standing on ceremony or trying to help people.

I reserve the remainder of my time.

Mr. DOMENICI. I yield to the Senator from Minnesota.

Mr. DURENBERGER. Mr. President, if we are going to go into Arkansas and be the cause of the death of some woman, I think it is appropriate for me to make the following points:

On liver transplants and the next transplants, whether it is your left ear, right ear, whatever, that comes along, it is not automatic because some person was able to perform one of them successfully. It does not mean that everyone in this country with a liver disease can survive a transplant.

That is why we started with an experimental process. That is why the experimental process has been ongoing now.

I am not going to detail the process because we do not have time. Ultimately, it ends up, as changes are made in the process, in a safe, decisionmaking process so that people who actually are subject to liver transplants can have them safely. That is the whole point of all of this.

I think we are arguing here that the children are much more likely to have a successful transplant, and that is why HHS made that decision. In the adult population, it is less certain. It is only a matter of time, not a matter of the life and death of women and children.

Mr. GORE. Will the Senator yield?

Mr. DOMENICI. From our side or your side?

Mr. GORE. I want to ask a question.

Mr. DOMENICI. If you have any time left.

The PRESIDING OFFICER. Twenty-four seconds.

Mr. BUMPERS. I yield him 24 seconds, but before I do I want to say that your chances of survival with a liver transplant are only slightly worse if you are over 18 than it is if you are under.

The PRESIDING OFFICER. There are exactly 24 seconds left.

Mr. GORE. There have been 600 liver transplants done with a 70-percent survival rate. This is a medical decision on whether it is experimental. The NIH in its development conference looked at that question, made the decision and said it was not experimental whether you were above or below 18. The administration has refused to recognize the medical and scientific judgments of the best experts in this country. We should vote for this amendment.

The PRESIDING OFFICER. The Senator from New Mexico has 1½ minutes.

Mr. DOMENICI. Mr. President, I, too, commend the two distinguished Senators. I hope nobody really believes that our vote down here is a vote to deny an operation to a constituent of my good friend, DALE BUMPERS, the distinguished Senator from Arkansas. The truth of it is that it is an accident that we have this bill on the floor today. It was supposed to be finished 3 weeks ago. How many phone calls are we going to get from across America that there are people who want an operation and even though we have the most expensive medical system in the world, approaching 10 percent of our gross national product, somebody needs something, so we are supposed to come here to the floor and says, "If you do not vote for it, you are Mr. Scrooge. One of my good constituents is going to die."

I think it is really a frivolous argument. It is probably worse than that but I cannot generate the right word for it.

I yield the remainder of the time to my good friend from Minnesota.

Mr. DURENBERGER. Mr. President, I will conclude by repeating what I said at the beginning of this debate. Unfortunately, we are here with this amendment because this is the only vehicle on which the Senator from Arkansas could do what he believes ought to be done. I agree with him, that it is the only vehicle.

I will say once again, it is only a question of the appropriate time and the appropriate way in which we provide for this financing.

We have all had the unfortunate experience of living with a kidney dialysis program and where we have rescued millions of people from death with a program, the financing of which, however, has gotten out of hand. We think there is a good way to do liver transplants and we are begging people for the time to do it right. We hope by next year that time will be here.

With that, I would urge my colleagues to vote against this proposition and in order to facilitate doing it I move to table the amendment.

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—51

Abdnor	Grassley	Packwood
Andrews	Hatch	Pressler
Armstrong	Hawkins	Proxmire
Bentsen	Hecht	Quayle
Boschwitz	Heinz	Roth
Cochran	Helms	Rudman
Danforth	Humphrey	Simpson
Denton	Kassebaum	Specter
Dole	Kasten	Stafford
Domenici	Laxalt	Stennis
Durenberger	Long	Stevens
East	Lugar	Symms
Evans	Mattingly	Thurmond
Garn	McClure	Trible
Goldwater	McConnell	Wallop
Gorton	Moynihan	Warner
Gramm	Murkowski	Zorinsky

NAYS—47

Baucus	Byrd	Dodd
Biden	Chafee	Eagleton
Bingaman	Cohen	Exon
Boren	Cranston	Ford
Bradley	D'Amato	Glenn
Bumpers	DeConcini	Gore
Burdick	Dixon	Harkin
Hart	Levin	Pryor
Heflin	Mathias	Riegle
Hollings	Matsunaga	Rockefeller
Inouye	Metzenbaum	Sarbanes
Johnston	Mitchell	Sasser
Kennedy	Nickles	Simon
Kerry	Nunn	Weicker
Lautenberg	Pell	Wilson
Leahy		

NOT VOTING—2

Chiles	Hatfield

So the motion to lay on the table amendment No. 1046 was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1047

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] for himself and Mr. GORE, proposes an amendment numbered 1047.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill add the following new language:

SEC. . (a) Congress finds that:

1. There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

2. There are 4000 to 4700 potential candidates in the U.S. each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

3. There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

4. After extensive review and consideration of all the available data, an NIH expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

5. NIH further recommended that liver transplants be done in individuals both under and over 18 years of age.

6. The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

7. The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) Based upon the above findings, it is the sense of the Senate that:

1. For the purposes of Title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

2. A liver transplant shall be covered under such title when reasonable and medically necessary.

3. The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

Mr. BUMPERS. Mr. President, this is a sense-of-the-Senate resolution which says essentially what the amendment said. It just directs the Secretary to consider paying for transplants for those over 18 who are in this pool we have discussed. I think the managers of the bill will accept this amendment.

Mr. DOMENICI. Mr. President, I yield to the Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise in support of the sense of the Senate amendment proposed by my colleagues from Arkansas and Tennessee. I agree with them that the Secretary of Health and Human Services should act with dispatch to approve Medicare payment for liver transplants as quickly as it can be shown that they are therapeutically acceptable.

I understand that the Public Health Service has recommended that the Secretary approve payment for heart transplants by Medicare. The proposed criteria for payment is strict but appropriate for such therapy. I agree with my colleagues that the Secretary should be encouraged to explore the same avenue for Medicare recipients over 18 who fit the medical criteria for liver transplants.

I do not believe it is the Congress' place today to instruct the Secretary to pay for liver transplants through statute. The decision should be made by the Secretary in consultation with experts from the National Institutes of Health and the medical community.

The sense of the Senate is useful because it will send the clear messages that the body does not want the Secretary to dawdle on these types of decisions.

Medicare should not be in the business of rationing services. If a therapy is appropriate and efficacious, it should be paid for by the third party payers and health plans. However, with the possibilities of medical science there are many therapies which are technically possible, but not sufficiently effective or proven to be considered other than experimental. As medicine pushes the state of the art on its technical capability, more questions will arise.

I would hope that the managers of the Medicare Program in the Department of Health and Human Services will honestly apply the criteria for payment. If they do not, then it will be time for the Congress to act. In the case of liver transplants, I believe that the jury is still out.

The Senate will give its sense. Let's see what the Department does.

Mr. GORE. Mr. President, I hope the White House will see this amendment for what it is, a condemnation of their approach to assessing and evaluating coverage of organ transplant surgery.

Their head in the sand policy has created unnecessary confusing among third party payers and cost many lives. Lives are lost when patients in need of a transplant are denied access to care because their insurance refuses to pay, citing the Medicare sham that transplants are experimental. Lives are also lost because of the dangerous proliferation of unqualified transplant programs brought on by the administration's refusal to head recommendations by NIH and others to offer transplants only at a limited number of centers where performance of transplantation can be carried out under optimal conditions.

I hope the administration will take advantage of the opportunity this amendment provides and rethink their position. They should reconsider Medicare coverage of liver transplants, and in doing so I hope they will look closely at the CHAMPUS liver transplant policy and at the pending Medicare heart transplant coverage decision for guidance.

They also should finally propose the coverage policy for heart transplants that their own experts have recommended—that heart transplants be covered, but only for patients for whom the technology has been demonstrated to be successful and only at centers that have demonstrated they can successfully perform heart transplants. Americans have patiently waited 5 years for this decision and it is wrong that they be asked to wait any longer.

Mr. President, I will not take any more of my colleagues time on this amendment since I hope I made clear how strongly I feel about this issue during the debate on the previous amendment offered by the Senator from Arkansas. I urge support for the amendment.

Mr. DOMENICI. We yield back any time in opposition. We are willing to accept the amendment.

Mr. JOHNSTON. The amendment is acceptable, Mr. President.

Mr. BUMPERS. Mr. President, before I yield back the remainder of my time, I simply want to say I hope the Secretary will do two things. I hope she will look at this resolution. Sense-of-the-Senate resolutions are not very powerful, and I understand that. But I hope she will look at this resolution in light of the closeness of the vote that just occurred on this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (No. 1047) was agreed to.

Mr. BUMPERS. Mr President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I understand that the Senator from Oklahoma [Mr. BOREN] has an amendment that, after debate, we are going to voice vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1048

Mr. BOREN. Mr. President, I send an amendment to the desk, on behalf of myself, Senator GRASSLEY, and Senator NICKLES, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. BOREN], for himself, Mr. GRASSLEY, Mr. NICKLES, and Mr. BENTSEN proposes an amendment numbered 1048.

Mr. BOREN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 84, between lines 10 and 11, insert new subsections (d) and (e) as follows:

"(d) The Farm Credit Administration shall take no action under the provisions of the Farm Credit Act of 1971 that would result in the liquidation or merger of any Federal land bank association or production credit association unless such liquidation or merger was approved by the stockholders of the association prior to November 14, 1985, or after December 31, 1985. This subsection shall not be applicable to the Eighth Federal Farm Credit District (Omaha, Nebraska) except that in the case of such district, no elections may be certified, no charters may be issued, and no associations may be liquidated, prior to December 20, 1985.

"(e) Effective for the period from the date of enactment of this Act through December 31, 1985, no Federal land bank, Federal intermediate credit bank, Federal land bank association, or production credit association may (1) require any borrower to provide additional collateral for any loan made under the Farm Credit Act of 1971 if the repayment under the terms of such loan is not overdue, or (2) bring any legal action to foreclose on, or otherwise liquidate, any loan that is based on the failure of a borrower to provide additional collateral for such loan if the repayment of the loan was not overdue at the time such collateral was required.".

Mr. BOREN. Mr. President, the amendment which I have submitted on behalf of Senator GRASSLEY, Senator NICKLES, and myself deals with the action within the Farm Credits System to move ahead with the consolidation of local boards.

We are facing a situation in the Washita district, for example, where it is proposed that 71 legally elected boards of directors from local credit associations and local Federal land bank associations should be consolidated into one board in the Washita district. This election is due to occur in this month.

I am very concerned that a system which began with the concept of grassroots ownership by the farmers themselves and the concept of grassroots control through legally elected representatives of the farmers is being replaced very rapidly by a totally consolidated system in which the farmer-owners at the grassroots level have very little to say in operations.

I am also concerned by some reports that, potentially, there are farmers who are completely current on their loans to the associations, but because the farmland values have been declining, those farmers are required to come up with additional collateral or face possible foreclosure on their loans.

This amendment would really do two things.

No. 1, it would prevent the further consolidation of locally elected boards of directors or the further liquidation of local production credit associations or Federal land bank associations until January 1.

This is not a permanent prohibition. It would simply give us time in Congress to pass farm credit legislation so that whatever action we take would not be moot because the system had moved in a different direction while we were still trying to deliberate here.

Second, it would provide the same moratorium through January 1 on any foreclosures on those farmers whose loans are current who are not behind time in terms of payment but who have had some erosion in the value of their collateral due to falling land values.

There is one exception to this general provision and that deals with the Omaha district where a financial arrangement is now underway which requires that by January 1 the associations in the Omaha district shall have consolidated in order to receive financial help from the remainder of the system.

We have provided that the restriction on continuing to hold elections does not apply to the Omaha district. However, we do provide that the results of those elections shall not be certified until December 20. New charters for the consolidated associations shall not issue until December 20, and there can be no liquidation of local associations prior to December 20. That would give us an opportunity even in the case of the Omaha district to attempt to find a better solution and to fashion a better solution here on the floor of the Senate and the floor of the House of Representatives before

that consolidation occurs. It would also protect those in the Omaha district as well against having their farms foreclosed during this period when the farmer involved was current on his loan.

Mr. President, this amendment will prohibit the farm credit system, between now and January 1, 1986, from liquidating or merging any Federal land bank association or production credit association unless the liquidation or merger was approved by the stockholders before October 1, 1985. In addition, the amendment would prohibit, during the same time period, the farm credit system from requiring a borrower to provide additional collateral for a loan if the repayment of the loan is not overdue. Finally, this amendment prohibits the farm credit system from bringing any legal action to foreclose on, or otherwise liquidate, any loan that is based on the failure of a borrower to provide additional collateral for a loan that is not overdue.

It has recently become apparent that the farm credit system is in trouble. The depression in agriculture has caused a huge increase in the system's loan losses, as more and more farmers are forced to default on their loans. From 1983 to 1984, Production Credit Association foreclosures increased by 293 percent in the ninth farm credit district headquartered in Wichita, KA. Over the past 5 years, Federal land bank bankruptcies have increased by 1,444 percent. In my home State of Oklahoma, alone, there were 178 foreclosures by the Federal land bank pending. By the end of August, the number of foreclosures pending in Oklahoma had risen to 359.

The combined farm credit banks incurred net losses of $522.5 million for the 3 months ending September 30, 1985. Third quarter losses for the Wichita district alone, was $106.5 million. There is no question that the stability of the system is in jeopardy. Because of the increased number of problem loans, the system has been forced to increase interest rates at a time when all other interest rates were declining. This has driven many good borrowers to other agricultural lenders. With the good borrowers, the farm credit system cannot survive.

Mr. President, at a time when farmers have been in the worst economic time since the Great Depression, the farm credit system has dramatically increased its operating cost without a corresponding increase in loan volume. For example, in 1980, the permitted salary of the chief executive officers of the system ranged from $66,000 to $120,250. By 1985, the salary range had jumped to $146,000 to $233,500. In addition, since 1979, the operating expenses of the Farm Credit Administration has increased by 86.9 percent. How can this be justified when farmers are going broke? It cannot be.

It is imperative that we deal with the farm credit issue before the first of the year. We must address the operating expenses of the system and the policies of the system. I have full intentions of offering amendments to the farm bill which would address many of the problems of the system. In addition, I have been working with Senator BOSCHWITZ to design a credit package which would return the farm credit system to a viable lending organization.

The farm credit system has been attempting to deal with its problem. Regretfully, however, the path the system has taken would in many instances destroy the virtue of the system. From the very beginning, the farm credit system has been locally controlled. The strength of the system has been this local control. Now, in an effort to return the system's viability, mergers and the watering down of local control has been occurring. I can understand the need for mergers of associations in some instances. However, I do believe that any merger must be approved by the stockholders and that the stockholders must have a real choice.

Farm credit system borrowers in the Wichita district are being asked to vote in the next couple of weeks of a system-wide merger of production credit associations and Federal land bank associations. This merger will turn the 71 local associations into one association. Right now, there are approximately 350 local board members with some power over the approval of loans. Under the proposed merger for the ninth district, there would only be 14 board members with any kind of power over the approval of loans. I am very concerned about the obvious loss of local control that will occur under the proposed merger in the ninth district. However, if the stockholders in Oklahoma, Kansas, New Mexico, and Colorado truly believed a merger were necessary for the system to survive, I would not stand in the way or propose legislation which would not allow them to choose mergers. Right now, though, the stockholders do not have a legitimate choice. They have been told either to approve the merger or their association may be liquidated. They have also been told that if the association does not approve the merger, the cost of captial to the local association will be increased. It is obvious that this does not allow the stockholders to make a legitimate choice to merge. They are being coerced into voting for merger. This is particularly true for those borrowers who have no place else to go for loans.

Because it has become obvious that the farm credit issue will be dealt with before the end of this year, it is logical that the farm credit system temporarily delay any proposed actions on mergers or liquidations of associations. The credit package that we adopt this year may eliminate the necessity for mergers. In any event, it will allow the stockholders to have a clear choice by permitting them to know what Congress is going to do before they are forced to vote on a merger. It is only fair that the stockholders are aware of all the options they have before a vote is required or before a merger has taken place.

The amendment I am offering today will place the system in a "holding pattern" until January 1. By that time, Congress should have enacted legislation dealing with the farm credit system. If Congress has not dealt with the issue this year, then the system could proceed with plans to merge associations or liquidate associations.

The amendment will also prohibit the farm credit system from requiring additional collateral on loans that are current. At the present time, the system is reviewing even current loans and if the asset value of the collateral for those loans have declined, they are requiring the borrower to provide additional collateral. Land values in the past year have declined by 12 percent. In some areas, land values have fallen by as much as 50 percent in the past year. Obviously, this has weakened the position of the farmer. Declining land values have resulted in the lowering of the value of the assets used to secure the loans.

I can understand situations wherein a lender would request additional collateral when the value of the borrower's assets have declined. I can understand the need for a commercial bank to require additional collateral on its loans as the FDIC could declassify the bank's portfolio pushing the institution close to failure. However, in this amendment, we are not talking about commercial banks or the Farmers Home Administration. We are, rather, talking about a lending organization that was chartered by Congress for a specific purpose. The farm credit system is, in reality, a semi-Government agency because of its purpose. In my opinion, as long as a borrower is making his payments on time, his loan should not be liquidated just because on paper it appears that the loan is not sound. A farmer should not be foreclosed upon merely on the basis of declining land values over which he has absolutely no control.

Mr. President, I believe we must enact these two provisions if we are going to preserve the farm credit system as we know it today. I urge my colleagues to join in supporting this amendment.

Mrs. HAWKINS. Mr. President, I rise in opposition to this amendment. I do so for a number of reasons.

The amendment of the Senator from Oklahoma will raise farmers' interest rates, it undermines local control of farm credit system institutions, it is a piecemeal approach to solving a much larger problem, and it circumvents the committee process. For all these reasons, I oppose this amendment.

Mr. President, this amendment purports to protect the interest of local stockholders/borrowers of the farm

credit system by preventing the merger or liquidation of any Federal land bank association between the date of enactment of this measure and the end of this year. Although this may be the intent of this amendment, it is certainly not the effect.

This amendment threatens all of our Nation's farmers with higher interest rates. Should this amendment become law, the New York bond markets will most certainly completely lose faith in the Federal farm credit system. If that should happen interest rates paid by farmers will soar. Under current law, the farm credit system raises almost all of its funds for new farm loans in the New York bond market. In recent weeks, the market's uncertainty over the management, soundness, structure, and regulatory scheme of the farm credit system has caused the system's cost of funds to reach historic heights. This amendment removes the authority of a majority of stockholders to act in their own best interest to protect the viable assets of their PCA or land bank association.

Let me ask a question of those who profess to advocate for local control. Would you purchase the securities of a system that had lost—through governmental fiat no less—the ability to act in its own best interest? I think the answer to that is no. I am certain that will be the answer of the New York investment community should this amendment become law.

Since early September the interest rate required for a successful offering of securities by the farm credit system has risen by as much as 85 basis points over the historical average. Traditionally, the farm credit system has been able to sell securities bearing interest rates almost identical to the cost of Treasury bonds. This increase is due to the perception that the farm credit system has been badly managed, is adversely affected by the economic hard times in rural America, has suffered already and is due to suffer large loan losses in the future. This amendment, stripping the voting rights of local stockholders will only worsen the New York market's perceptions of the farm credit system.

There is one thing that I would like to make clear to Senators. Each basis point increase on farm credit securities means $300 million in additional interest costs to America's farmers. So for Senators who profess to have the farmers' interest at heart I urge you to vote against this amendment or be prepared to bear the burden for raising farmers' interest rates.

Mr. President, another reason I oppose this amendment is because it undermines local control. This amendment will prevent the merger of Federal land bank associations or production credit associations by overriding the current law requirement that such mergers or liquidations can only take place following a majority vote of that association's stockholders unless an association has failed to meet its legal obligations. This amendment prevents the stockholders of local PCA's and Federal land bank associations from excercising their lawful authority to act in cases where some remedial action is necessary to protect the assets of farmer/stockholder/borrowers of the farm credit system.

This amendment accomplishes by Federal fiat the exact opposite of what its supporters contend it is designed to accomplish.

I would like to raise a question for those who purport to care about the issue of local control to answer. Who are the stockholders of the cooperatively owned farm credit institutions? The answer is simple. Farmers who borrow from the farm credit system institutions are the stockholders.

I would like to raise another question for those who intend to promote the issue of local control. Who elects the boards of directors of the PCA's and the land bank associations? Again, the answer is simple. The farmer/stockholder/borrowers elect their local board of directors.

Under the framework of current law there is a direct relationship between the farmers who buy stock in and borrow from the farm credit system and the management of their local PCA and land bank association. Under current law this relationship is protected by a requirement that no PCA or Federal land bank association may be liquidated or merged without a majority vote of the stockholders.

The amendment of the Senator from Oklahoma directly interferes with local control. It states that a local association may not merge or liquidate even if the stockholders—with direct knowledge of the condition of their institution—believe it is in the best interest of their stockholders to take such an action.

Now let me make one thing clear. If there is a single farmer who has been intimidated by anyone into voting to merge or liquidate his PCA or land bank association he has an open ear with this Senator. In the Columbia District, my district, the PCA's recently voted to merge into one district-wide association. From the reports I have received this election went smoothly. I cannot be everywhere or hear everything. I do put my faith in the farmers who are stockholders and borrowers of farm credit institutions to act in their own best interest. Rumor has it that forced mergers are taking place. Under the law this is not allowable. Farmer/stockholders should not allow it.

Finally, Mr. President, I oppose this amendment because it is a piecemeal approach to addressing a problem that needs a comprehensive solution. The Agriculture Committee is working to develop such a solution. But we intend to address the myriad deficiencies of the existing Farm Credit System and its regulatory agency, the Farm Credit Administration. I simply conclude by saying that the current problems of the Farm Credit System are complex. As Senators know, the farm credit system has asked for a multibillion-dollar bailout. Let me remind Senators that this is the same Farm Credit System that, by its own admission, has a $5 billion surplus. Now that surplus is spread around among all the district banks. But I hope that other Senators will agree, that the richer farm credit districts have an obligation to assist the districts that are not so rich. I hope the Senators would agree that the management and operations of the Farm Credit System banks need to be approved. I hope Senators would agree that accountability of the Farm Credit System banks and their managers must be improved. I hope Senators would agree that a strong "arms length" regulator needs to be created. I am certain that most Senators will agree that local control needs to be maintained.

The Agriculture Committee is working on all these issues I believe with some success. But we hope to address all of these issues in a timely and comprehensive fashion. Not one little issue at a time on the floor of the Senate.

Mr. President, for all of these reasons I oppose this amendment and urge other Senators to do likewise.

The PRESIDING OFFICER (Mr. TRIBLE). The majority leader is recognized.

Mr. DOLE. Mr. President, we have had a conference on this side. I asked the distinguished chairman of the Agriculture Committee and also the distinguished Senator from Iowa, Senator GRASSLEY, and the Senators from Oklahoma [Mr. BOREN and Mr. NICKLES] both. If satisfactory to the managers of the bill, we are willing to accept the amendment.

Mr. DOMENICI. Mr. President, I yield back the remainder of our time.

Mr. BOREN. Mr. President, I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, we have no objection to the adoption of the amendment.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (No. 1048) was agreed to.

Mr. BOREN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1049

(Purpose: To amend section 125 of title 23, United States Code, to increase the State emergency repair fund limitation)

Mr. BYRD. Mr. President, on behalf of myself, Mr. ROCKEFELLER, Mr. JOHNSTON, Mr. WARNER, and Mr. TRIBLE, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself, Mr. ROCKEFELLER, Mr. JOHNSTON, Mr. WARNER, and Mr. TRIBLE, proposes an amendment numbered 1049.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . The first sentence of section 125(b) of title 23, United States Code, is amended by inserting after "$30,000,000" the following: "($55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985)".

Mr. BYRD. Mr. President, as I am sure my colleagues are well aware, West Virginia was stricken by severe flooding last week. While West Virginia is no stranger to flooding, with its mountains and narrow valleys, I must admit that in all of my years, this is the worst, most devastating flood that I have ever seen.

There are 55 counties in my State; 29 have been declared disaster areas. That is over one-half of the counties in the State. We are still trying to determine the extent of damages. At last count, 48 bridges were washed away with the flood-waters, and whole sections of roadways have been severed. Some towns are economically and physically virtually wiped out, and access to other towns has been cut off.

I have spoken with Gov. Arch Moore of West Virginia on a number of occasions since the floods, and I met with Secretary of Transportation Elizabeth Dole in my office yesterday to discuss what could be done to address this emergency situation. Secretary Dole advised that the Federal Highway Administration has personnel in the State to assess damages to roads and bridges, and that those damages are extensive.

Secretary Dole indicated that while assistance can be provided through the emergency relief fund, there is a definite problem because of a $30 million cap on the dollar amount that can be spent in any given year per disaster in a State. Early estimates indicate that the flood damage will far exceed that amount.

The amendment I offer today on behalf of myself and Senators ROCKEFELLER, JOHNSTON, WARNER, and TRIBLE will raise that cap to $55 million, an action that has been taken in the past during times of emergency.

Much has been done to date to gather up the bits and pieces that remain. I have gone back home to West Virginia and seen first hand much of the damage. The desire to rebuild has been apparent at each of the towns I have visited since the flood. However, there is much that needs to be done. The adoption of this amendment will be a step in the right direction, and I urge its adoption.

Mr. President, I have discussed this with the manager and the ranking minority manager, and I believe they are ready to accept the amendment.

Mr. DOMENICI. Mr. President, we have discussed this amendment with the distinguished minority leader and some of the cosponsors at length today, and we have discussed with the chairman of the authorizing committee, the distinguished Senator STAFFORD. We have no objection to the adoption of the amendment. We think it is very reasonable.

Mr. JOHNSTON. Mr. President, we have no objection on this side of the aisle.

Mr. DOMENICI. Mr. President, I yield to the distinguished senior Senator from Virginia.

Mr. WARNER. Mr. President, speaking both on behalf of myself and my distinguished colleague now presiding over the Senate, we wish to join our distinguished colleague from West Virginia.

All Senators cosponsoring this amendment have visited these areas of West Virginia and Virginia personally over the past weekend or past few days.

It is essential that Federal assistance be expedited to that part of our Nation which has suffered so grievously under this natural disaster.

We wish to commend the distinguished minority leader for his leadership on bringing this amendment.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his kind words.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, let me just ask if the distinguished junior Senator from West Virginia needs some time. We have a little time here. We are in no rush.

Mr. ROCKEFELLER. Mr. President, will the Senator yield time to me?

Mr. DOMENICI. I yield as much time as the Senator desires.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, as the Governor of West Virginia for 8 years, I witnessed a number of tragic disasters, but none as devastating as the recent flooding which struck some 30 counties in West Virginia. I have personally toured many of the stricken counties and intend to visit even more this weekend. Each trip back, I find people ovrwhelmed by destruction—but determined to rebuild their lives.

I believe West Virginians can and will get back on their feet—but they need immediate and substantial financial help.

The damage to West Virginia's roads and bridges has been assessed in early estimates as over $120 million. Over 500 West Virginia roads and 50 bridges have been damaged or wiped out by floodwaters. Current law limits Federal Highway Administration funds to a mere $30 million. Clearly, West Virginia will need more Federal funding to start rebuilding our roads and bridges. Rebuilding our transportation arteries is a vital first step toward recovery for our flood-stricken communities—many of which are rural and remote.

Increasing the Federal Highway Administration's cap to $55 million will be enormously helpful in rebuilding West Virginia's economy and infrastructure. There is precedent for our action, Mr. President. In 1983, California was struck by severe flooding. Once it became apparent that $30 million was insufficient for necessary highway repairs, Congress removed the cap so California's pressing needs could be met. Moreover, the Secretary of Transportation this week publicly recognized that a $30 million cap is too low to adequately deal with the floods which struck Appalachia.

In closing, Mr. President, let me reiterate that the sooner these funds can be made available to West Virginia, the quicker our people can begin the process of rebuilding our roads and bridges—and rebuilding West Virginia's economy along with it.

Mr. DOMENICI. Mr. President, I yield back the remainder of my time.

Mr. JOHNSTON. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (No. 1049) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank the distinguished manager, Mr. DOMENICI, and the ranking minority manager, Mr. JOHNSTON, and all other Senators who have participated in the offering of this amendment.

Mr. DOMENICI. Mr. President, I understand that pursuant to the unanimous-consent agreement, there is one remaining amendment that Senator METZENBAUM has, a Medicaid amendment, on which there is 20 minutes to be equally divided. We are ready for the amendment, and that is the last amendment.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio [Mr. METZENBAUM] is recognized.

Mr. METZENBAUM. Mr. President, how much time is allocated on the last amendment that I have with Senator GLENN?

The PRESIDING OFFICER. It will be 20 minutes equally divided on the Metzenbaum amendment.

The Senator from Ohio [Mr. METZENBAUM] is recognized.

AMENDMENT NO. 1050

(Purpose: To strike section 748 of the bill (relating to revaluation of assets under Medicaid program))

Mr. METZENBAUM. Mr. President, I send an amendment to the desk on behalf of Senator GLENN and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. GLENN, proposes an amendment numbered 1050.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 225, strike out all beginning with line 20 through line 6 on page 228.

Mr. METZENBAUM. Mr. President, I have offered this amendment because I had two amendments voted down this afternoon, and I am stubborn enough to think this one is going to go.

Mr. President, this amendment is going to reduce the deficit by $70 billion over 3 years, and it accomplishes this by striking a provision in the reconciliation bill which increases the reimbursement rate for capital cost payments to nursing homes under Medicaid due to changes in ownership.

Last year Congress passed a law reforming the system. This year we are being asked to undermine that reform. How absurd can we be? Congress passed the law last year in an attempt to control the rapid turnover of ownership in the nursing home industry.

What my amendment would do is to preserve this reform by eliminating that provision in the bill which makes it possible for nursing homes to be recapitalized at point of sale. Is that provision absurd?

Listen to what I am saying. If a nursing home operator sells out to one of the large private nursing home corporations in the country, there is a revaluation of assets under Medicaid.

Nothing occurs for the patients or the people who occupy those homes. There is not any improvement of services. But there is one thing that occurs. The American taxpayer is called upon to pay more for Medicaid? Why? We realized this was wrong just 1 year ago. Now this Finance Committee would have us undo that which was done in 1984.

This trafficking problem in nursing homes has led to an annual turnover in nursing home ownership of up to 30 percent. The nursing home industry has become an acquisition game, with more attention being paid to the real estate and tax shelter implications than the quality of care provided to the residents.

We can save $70 million if we accept this amendment. And if you do not, you are expending $70 million of Medicaid funds without a scintilla of improvement as far as the care of the patients is concerned. That is not logical.

You have to understand that both the State and the Federal governments pay more money, if you do not take our amendment, for use of the same assets, for the same purpose with no guarantee of improved or additional facilities. We were smart enough to change the law last year; now we may be dumb enough to change it back.

In 1983, these for-profit nursing homes increased their number of beds by 15 percent. But, listen to this, 90 percent of that increase was due to the acquisition of existing nursing homes, not new construction. It is estimated that, by 1990, 50 percent of all nursing homes beds will be operated by between 5 and 10 nursing home companies. That is not good policy. The AARP and the National Council for Senior Citizens have expressed their concern over the concentration of ownership in the health industry.

Now I know that many Members might be interested in doing something about setting the value of capital assets for the purpose of determining Government payments. But this is not the way to do it. This is not where you are building a new building. This is where you are taking an old building and selling it for more money and increasing the capital cost.

Let me conclude with four simple arguments for this amendment. It cuts the deficit by $70 million over the next 3 years. It removes a provision from the bill which is opposed by the American Association of Homes for the Aging, the National Council of Senior Citizens, and the National Citizens Coalition for Nursing Home Reform.

If we do not take this amendment, we would have seen fit to give away $70 million of the taxpayers' funds which we were smart enough to do something about 1 year ago. Let us not undo that which we have done.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. PACKWOOD. Mr. President, is there a time set to vote? Several Members have asked me and I am trying to remember.

The PRESIDING OFFICER. There is no specific time. There is 20 minutes allocated on this amendment, equally divided, between the two sides. The Senator from Ohio has been allocated 5 of those 10 minutes and those 5 minutes have expired. Who yields time?

Mr. PACKWOOD. I yield 5 minutes to the Senator from Minnesota.

Mr. DURENBERGER. I thank the Chair, and I thank my colleage from Oregon.

The Senator from Ohio said, as he began his remarks on his amendment, that he had not made it on two others and might not make it on this one. I guess I hope he does not.

Did the Senator understand me all right?

Mr. METZENBAUM. I want to be 100-percent accurate. I missed on three.

Mr. DURENBERGER. He missed on three; hopefully, we will make it four.

Let me again try to be brief. I will leave the main arguments on this issue to the chairman of the Finance Committee. This was not an easy issue for any of us to deal with, not because of the health policy issues or some of the issues raised by the Senator from Ohio, but simply because when you get into the business of trying to decide what you are saving or what you are spending and you are talking about savings that come off of health care providers these days, there is just no way to make accurate estimates.

So I would start by suggesting to my colleagues that the theory that we are going to save $70 million to anybody by voting for the amendment of the Senator from Ohio is fallacious.

Let me than go back to just a little bit of history on this issue. We did not talk much in the Medicare area about the whole business of revaluation of assets until a very bright and respected Congressman from Ohio, BILL GRADISON, asked the General Accounting Office to take a look at the issue. And they did that during the course of 1984, and near the end of the year issued a report indicating that there was some profit-taking in tax shelters in the hospital industry in the issue of revaluation of assets. So in the committee and in reconciliation, as I recall, last year we dealt with that issue relative to hospitals. I will not try to explain all the detailed differences between the hospital industry and the nursing home industry and the long-term care industries, but they are substantial.

As I recall—and maybe the Senator from Oregon can recall better then I—but it was sort of at the last minute in this reconciliation process that we began looking around for some money and then thought maybe we would add the nursing homes in with the hospitals and pick up a few bucks. And that, as I recall, Mr. President, is the history of the whole issue of revaluation of assets as it relates to nursing home.

So we came back at that issue during the budget resolution issue and reconciliation process in the Finance Committee and came up with the proposal which is now part of the reconciliation which undoes a part of the action that we took in 1984. And it is a small enough part of it so that, as I understand, the increase or the so-called benefit here in the revaluation of assets provision that we put in is something like 1.6 percent in fiscal year 1985.

We also mandated a study of this whole process so that we would know more about it as it applied to the long-term care industry. So with those components in place, a modified provision, plus this capital financing analysis, I

think we believed that we were protecting the same interests that the Senator from Ohio would seek to protect.

I would say one thing relative to the issue of turnover. I do not think the turnover in ownership in the nursing home industry is due to tax shelters. I believe it is due to the failure of the financing system that we have in this country, both in Medicare and Medicaid, and the lack of a decent financing system in the private sector. That has a lot more to do with it. That, and the fact that States do not know whether they are afoot or on horseback when it comes to the utilization of nursing homes. That has a lot more to do with it than the tax shelter business.

And as to the fears that somehow somebody is going to make a lot of money in the future, I would say that in the old days of health care inflation, when you had an excess of demand over supply, there were probably a lot of people making money trading hospitals or nursing homes. I believe that is over, Mr. President. I would suggest that, for that reason, it would be appropriate for everyone in this body to support the effort to defeat this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PACKWOOD. Mr. President, I yield myself 5 minutes.

Mr. President, let me begin by understanding that about 95 percent of the Medicaid payments to nursing homes are fixed payments. It does not matter if the nursing home cost $2 million, brand new, or it cost $500,000 when it was built 20 years ago. They are fixed payments for the cost of taking care of patients. They are not payments based upon what it could cost you to build that nursing home, the capital involved.

So let us not be under any illusions here that if we allow this bill to pass—the bill as it is drawn, not the Metzenbaum amendment. What you pay for the cost of the patient is going to be roughly the same; 95 percent of the money is costs.

So let us talk about fairness. You are Johnny and Susie Jones and you bought a nursing home 25 years ago and another 15 years ago, one with 60 beds and one with 40 beds. You are now 62 years of age and you would like to retire. You built the nursing homes for $500,000 apiece and they are now honestly worth on the market $1 million apiece.

The new owner who would be willing to pay you $1 million is only going to be willing to pay you $1 million if that 5 percent portion of Medicaid payments which is a payment on capital can be based upon the $1 million. You are not going to pay $1 million for it otherwise. Or you make it very difficult for Johnny and Susie to get out of the business if you say these payments cannot be raised very slightly—very minor, talking about only 5 percent of the Medicaid payments—to take care of genuine capital pressure.

That is one.

Two, we will allow the increased capital value to go up very, very slightly. The reevaluation upward is limited to the acquisition cost of the previous owner, increased by 50 percent of the nursing home cost index published in the DODDS construction index or 50 percent of the consumer price index, whichever is lower. They are only going to allow the valuation to go up by half of its real increase in value to begin with.

Next, the American Association of Retired Persons, far and away the largest organization representing seniors in this country with more members than all of the senior organizations collectively put together, initially had some complaints about Medicaid reimbursement for nursing homes. They circulated a letter. My good friend from Ohio has circulated their letter from about a year ago concerning their complaints.

Based upon their suggestions the Finance Committee adopted a reevaluation of assets provision which they now approve. At least I want to read their more current letter in case anyone is under the misimpression that AARP is opposed. This is November 8, 1985:

> AARP believes the provision in the committee's reconciliation package is an acceptable interim measure for continuing Medicare and Medicaid participation in the capitalization of the nursing home industry. As originally framed the provision is less generous than originally proposed.

They support it. You take a look at the demographics of the population. We are going to need more and more nursing home beds as we reach 1990, 1995, and 2,000. That may or may not be true of hospital beds. But it is true of nursing home beds. If those who want to build nursing homes or buy nursing homes cannot have a fair reimbursement for the capital costs that they have involved in nursing homes, they are not going to build them and they are not going to buy them. People who built them 5, 15, 20 years ago are not going to be able to sell them. So they will close them.

For all of those reasons I hope when we do vote on the amendment of the Senator from Ohio, it will be turned down. Equity is on the side of the decision made by the Finance Committee. We have a balanced approach that is approved by the largest association of retired persons in the country. It is imperative that we allow this slight increase that will amount to no more than 1.6 percent in 1985; that we allow this very slight increase.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. PACKWOOD. I thought it was 20 minutes on a side.

The PRESIDING OFFICER. Ten minutes.

Mr. PACKWOOD. I apologize.

Please vote against the amendment of the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Thank you, Mr. President, and Mr. METZENBAUM, my colleague from Ohio.

Mr. President, I support the amendment introduced by Mr. METZENBAUM, which would strike from S. 1730 the provision allowing nursing homes to revalue their capital costs upon sale. I would like to take a few moments to explain why this amendment is important.

This amendment will save $70 million over the next 3 years. It will contribute to reducing the deficit which is precisely what our objective is in considering the reconciliation bill. I think that is the important thing to consider here.

Last year, as part of the Deficit Reduction Act of 1984, Congress stopped the practice of nursing homes revaluing their assets upward at the point of sale of the facility, under both the Medicare and Medicaid Programs. Traditionally, after a nursing home changed hands, the new owner was entitled to a higher reimbursement rate solely because of the purchase. There was no assurance of improvement or expansion of the facility or, more importantly, there was no assurance of better care. However, the new owner was assured of increased reimbursement. In 1984 the Congress thought it was good policy to stop this practice, and I think it's good policy to continue what we started last year rather than to partially undo it.

It is sound public policy to not have incentives in our Medicaid Program which encourage rapid turnover of nursing homes. Nursing homes in this country were changing ownership at a rate of nearly 30 percent each year and some were being sold annually. By eliminating revaluation of assets upon sale in 1984, we eliminated an incentive for changing ownership so frequently, thus ensuring that experienced providers of nursing home care stay in the business longer. A letter sent to the Finance Committee from three major senior citizen groups this past July stated, "We believe linking the mechanism for setting the value of capital assets to sale provides the wrong incentives for a stable, high-quality health care delivery system. Moreover, liking revaluation to sale exacerbates the concentration of ownership in the health care industry."

I know of no other business where the businesses are in effect "churned," as we call it in stock accounts when a broker sells stocks just to make his commission on those sales. I would submit there has been churning going on in the nursing home business when they are turning over at the rate of some 30 percent per year.

Following the enactment of DEFRA, Senators DOLE and DURENBERGER wrote

to Health and Human Services Secretary Heckler, stressing that the revaluation of assets provision was not meant to limit States' flexibility in choosing alternative payment methodologies for Medicaid, so long as a State's aggregate costs would not exceed increases allowable under Medicare policy. A number of States have implemented creative approaches to reimbursement which recognize the capital costs of nursing homes. My home State of Ohio has implemented several initiatives to recognize, yet limit, payments to nursing homes for their capital costs. Ohio's methodology is aimed at reducing the high rates of turnover in nursing homes. In fact, Ohio includes an incentive factor for owners to retain ownership of their facilities. Other States, such as Maryland and West Virginia, are experimenting with other methodologies.

Recognition of the capitalization of nursing homes is important and needs to be considered in formulating methodologies for Medicaid reimbursement. But basing revaluation upon the sale of a nursing home is not reasonable. Therefore, I intend to request that the General Accounting Office study alternative methods of recognizing capitalization costs in the Medicaid Program. This will provide an opportunity for us to carefully examine alternative approaches, including Ohio's, and to establish sound public policy for recognizing capital costs, instead of returning to revaluing assets just because a nursing home changes hands.

So I urge, Mr. President, that my colleagues support Senator METZENBAUM in this amendment. It is consistent with our effort to reduce the deficit because it will save $70 million over the next 3 years. And it will give us time to look at reasonable methods for recognizing capital costs for nursing home reimbursement. Let us not reinstitute a system we ended last year; one that encourages rapid turnover in an industry that needs stability. Instead, let's continue on the track Congress established last year in DEFRA. It will enable us to approach the capitalization issue in a reasonable manner so that we can enact good public policy.

I yield back the balance of my time to Senator METZENBAUM.

Mr. METZENBAUM. I thank my colleague from Ohio for his support.

Mr. President, let me mention the AARP. We have been all over the lot on this one.

They wrote me on November 13.

AARP's previous correspondence on this issue reflects the association's continuing concern that a revaluation on sale is not the only nor the most appropriate means for providing for a Federal policy in capitalization. Clearly, your communication to your colleagues on this issue based as it was on our letter and prior conversation with us accurately reflected our position at that time.

So when I indicated there was a concern at the AARP and there was strong opposition from several other organizations I was stating the facts correctly.

I want to say to my colleagues we should do the best we can for patients on Medicaid. I want to see to it that we get the most from those funds which the taxpayers provide for Medicaid services. But there is not any logical reason under the Sun that we should now undo that which we did in 1984. In 1984 we said when you sell a property it does not provide a sufficient basis to recapitalize it and, therefore, to increase the cost to the American taxpayer under Medicaid.

The buyer knows what he is getting. The buyer should not have a right just to up the cost of Medicaid by reason of having made a purchase at a higher price. The medical services are not improved. It does not help the patient in any way.

The only person that gets hurt if you leave the provision in the bill that the Finance Committee has put in is the American taxpayer. The American taxpayer will suffer. It is not right. We said that in 1984. We should not undo what we stated and did in 1984.

I yield back the balance of my time, and ask for the yeas and nays.

The PRESIDING OFFICER (Mr. DURENBERGER). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. As I understand it, we are not going to vote until about 10 minutes of 6 on this amendment, and then pursuant to the unanimous consent, we will vote final passage.

I need a few minutes to wrap up some of the technical matters on the bill, and make a few comments. But I have confirmed with the distinguished sponsor of the amendment that we would either have a quorum call or use the time for any comments until 10 minutes of 6, at which time we will vote on the Metzenbaum amendment, and then final passage if that is satisfactory.

Mr. METZENBAUM. That is perfectly agreeable with me. I understand it will be an up-or-down vote.

Mr. DOMENICI. We have not agreed to that.

Mr. METZENBAUM. I gather the Senator from Oregon——

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. PACKWOOD. It is my intention to make a motion to table.

Mr. METZENBAUM. Does the Senator from Oregon insist upon an up-or-down vote?

Mr. PACKWOOD. Yes. In this case, I will make a motion to table.

Mr. METZENBAUM. I ask my colleague from New Mexico why the delay on the vote? I did indicate my willingness to go along with it, and I did not raise the question of an up-or-down vote. But is there some reason?

The PRESIDING OFFICER. Is there an objection to this colloquy?

Mr. DOMENICI. I ask unanimous consent that we have up to 5 minutes to engage in colloquy.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOMENICI. I say to my friend from Ohio that we have informed a number of Senators on both sides who inquired about 30 minutes ago that we would not vote again in an up-or-down manner until about 10 minutes of 6.

We would like to accommodate them since we told them that. I did confirm it with the Senator. I did not tell the Senator it would be a table or a straight vote. The Senator agreed to it. That is why I told the distinguished chairman of the Finance Committee that we would not vote until 10 of 6, even though we are finished with the debate.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I will go along with the agreement, but I do want to say we spend so much time delaying. I cannot understand why we cannot get our work done. It seems to me we ought to just proceed forward.

I am not going to object to the unanimous-consent request of the Senator from New Mexico, but I want to point out that we ought to keep rolling. I will be glad to be of assistance in keeping these matters moving forward and trying to move them rapidly.

I think this is one of those matters that could have been anticipated. We should be able to vote up or down on the amendment as well as on final passage.

Mr. GLENN. I wish when arrangements like these are made some of the rest of us get in on the act, too. I reset the schedule back in my office depending on the time for amendment here. Now I have to go back and reschedule again. I wish word would be passed when we make arrangements about putting off votes.

Mr. DOMENICI. I understand how difficult it is to accommodate everyone. I have been trying to accommodate 20 or 30 people over the past couple of days. I think we have done a reasonably good job. If I have inconvenienced anyone, I am sorry.

Could I ask unanimous consent to have an additional 5 minutes to comment on the bill and to thank the various people who have worked on it?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I think everyone knows that this is a major bill. For the last week, I have been reminding the Senators that we are losing about $52 million a day in savings. It will take us a couple more weeks to get through conference with the House. Almost every standing committee of the

Senate and the House will be in the conference because they have all provided portions of this rather omnibus type bill.

Senator CHILES is not with us because he in not feeling well. He did an outstanding job on the minority side. I am most appreciative of what he has done.

All of the chairmen worked extremely hard, but in particular I want to thank Senator PACKWOOD, the chairman of the Finance Committee. His was a major role, as is usual. Whenever you have a bill that saves money, the Finance Committee takes the lead as they did again with this bill. I thank him not only for the work he has done but for all the time he has spent on the floor. I think we have had an accommodation that is exactly the way it ought to be.

This is not my bill. I am simply charged with packaging and managing it. I hope that each of the chairmen have felt comfortable in the arguments that have been made with respect to parts of the bill that concern their committee.

Senator DOLE and his staff have been extremely helpful, and, of course, Senator BOSCHWITZ and Senator GORTON, and Senator JOHNSTON on the other side.

The cooperation of Senator BYRD, the distinguished minority leader, has been essential. We could not have gotten to final passage tonight, as complicated as this measure has been, without his help and guidance.

Obviously, there have been a number of extraneous matters in this bill. We hope we have taken care of them for the future. For now, it will be a real challenge for the various chairmen as they go to conference in an effort to resolve differences with the House where there are many extraneous matters within the four corners of their bill.

When this bill was reported to the floor as a result of many of our authorizing committee's work, it achieved an $85,652,000,000 reduction in the deficit off of current policy over 3 years.

We have had about 15 rollcalls and adopted 31 of the more than 50 amendments that were offered. Our best estimate, using CBO's current evaluations, is that we have held the line. As a matter of fact, we have added about $94 million in savings over 3 years so we have cut $85,746,000,000 off the base line.

I think that is a pretty good job, a pretty good day's work. In years past that would have been a rather astronomical bill. It is getting rather ordinary around here that we pass these kinds of reconciliation bills. But it is far more than ordinary. It is a major effort.

Mr. President, I ask unanimous consent that a table entitled "Amendments to the Senate-reported Reconciliation Bill that Increase or Reduce Total Deficit Reductions" be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AMENDMENTS THE TO SENATE-REPORTED RECONCILIATION BILL THAT INCREASE OR REDUCE TOTAL DEFICIT REDUCTIONS

[In millions of dollars]

	1986	1987	1988	1986–88
Total deficit reductions in Senate-reported bill	−21,622	−28,340	−35,689	−85,652
Amendments: [1]				
DeConcini—motor vehicle fleet reductions	1	11	−289	−277
Kennedy—military pay and health care	71	−254	−59	−242
Stafford—LIHEAP disregard for shelter deduction under food stamp program	33	65	67	165
DeConcini—Customs user fees [2]	NA	NA	NA	NA
Heinz—medicaid coverage for ventilator dependent people	85	92	52	229
Cranston—increased medicare funding for rural hospitals	3	5	5	13
Simon—JTPA and food stamps	5	6	7	18
Total amendments	198	−75	−217	−94
Total deficit reduction in Senate bill as amended to date	−21,424	−28,415	−35,906	−85,746
Resolution directive	−19,382	−24,036	−32,117	−75,535

[1] All estimates are from CBO.
[2] This amendment is expected to cost less than $10 million over 3 years.
NA means not available.

Mr. DOMENICI. Mr. President, I want to express my appreciation to all the committee staffs that have worked so hard to bring this bill to completion. The reconciliation bill could not have been completed without the dedicated work and cooperation of the Senate committee staffs.

I want to particularly thank my staff on the Budget Committee, both the majority and minority staffs. I know that their hard work will continue as we take this bill to conference and finally bring to a completion the fiscal year 1986 budget resolution blueprint.

As I understand it, there is one matter, before I yield the floor and ask for a quorum call, that has been cleared on both sides.

Mr. President, I have nothing further. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I move to lay on the table the amendment of the Senator from Ohio. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oregon [Mr. PACKWOOD] to lay on the table the amendment of the Senator from Ohio [Mr. METZENBAUM]. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER (Mr. COHEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 71, nays 27—as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—71

Abdnor	Garn	Mitchell
Andrews	Goldwater	Moynihan
Armstrong	Gore	Murkowski
Baucus	Gorton	Nickles
Bentsen	Gramm	Nunn
Boren	Grassley	Packwood
Boschwitz	Hatch	Pressler
Bradley	Hawkins	Quayle
Bumpers	Hecht	Rockefeller
Byrd	Heflin	Roth
Chafee	Heinz	Rudman
Cochran	Helms	Sasser
Cohen	Humphrey	Simpson
D'Amato	Johnston	Specter
Danforth	Kassebaum	Stafford
Denton	Kasten	Stevens
Dole	Lautenberg	Symms
Domenici	Laxalt	Thurmond
Durenberger	Leahy	Trible
Eagleton	Long	Wallop
East	Lugar	Warner
Evans	Mattingly	Weicker
Exon	McClure	Wilson
Ford	McConnell	

NAYS—27

Biden	Hart	Metzenbaum
Bingaman	Hollings	Pell
Burdick	Inouye	Proxmire
Cranston	Kennedy	Pryor
DeConcini	Kerry	Riegle
Dixon	Levin	Sarbanes
Dodd	Mathias	Simon
Glenn	Matsunaga	Stennis
Harkin	Melcher	Zorinsky

NOT VOTING—2

Chiles	Hatfield

So the motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

URBAN DEVELOPMENT ACTION GRANTS

Mr. GRASSLEY. Mr. President, the Urban Development Action Grant Program is one that has helped our country rebuild many of its distressed communities.

During the December 1983 round of UDAG grants the Secretary of HUD implemented selection criteria that he felt was based on the intent and direction that Congress had given him. However, the criteria shut out over three-fourths of the cities in the

United States. I do believe that the Secretary was basically right in what he did when he implemented the UDAG formula based on legislative language in the bill establishing the program. But I don't believe that Congress intended to write the law so that these communities in need would be shutout.

The proposed formula change that is included in the bill we are discussing today will give those communities that have been shutout an opportunity to again take part in this program.

Over the past 2 years we have looked at several different ways to improve the program and have tried to develop a fair formula. The one that is contained in this bill is a compromise that is supported by several Senators on both sides of this issue as well as over 12 private organizations including the National League of Cities and the National Association of Counties.

I will not stand here today and presume to say that this compromise is the final answer to the formula problem, but I will state that unless we move ahead with positive changes, then we will not have a UDAG Program. Without a change we will continue to have business as usual where over 65 percent of the funds continue to go to a few States.

When this formula change occurs, the data we collect will allow our cities to see if they will again be able to compete. If this formula does not work, the Secretary of HUD will have to report to Congress on possible changes needed to make this program a national one.

I would like to take this opportunity to thank Senator GARN and his staff for the assistance they have given me with the formula change and I would especially like to thank the ranking minority member on the Housing Subcommittee, Senator RIEGLE, for helping to make this change possible. He has spent many hours trying to make the system an equitable one that would be acceptable by both sides.

I am encouraged by this action and look forward to seeing this program used again by the local communities in Iowa.

Mr. BAUCUS. I rise to engage the Senator from Oregon with an inquiry regarding the user fee for customs brokers permits provided for by the committee.

As the Senator knows, last year I sponsored an amendment to what is now Public Law 98-573, the Trade and Tariff Act of 1984, which provided for Customs Service regulations of the customs business of customs brokers. Section (H) of that amendment established "reasonable fees and charges to defray the cost of the Customs Service" in carrying out this responsibility including, but not limited to, a fee for licenses issued under my amendment.

The committee has provided for an annual $125 fee in the legislation before the Senate today, which would be imposed on permits for customs brokers. Are these the fees contemplated by section (H) of Public Law 98-573?

Mr. PACKWOOD. I thank the Senator for his inquiry. As you are aware, Public Law 98-573 provides for both licenses and permits. Every individual, corporation, association, or partnership wishing to conduct customs business for those other than themselves must hold a valid customs brokers license. Every person granted a license will be subsequently issued a permit to conduct business in a particular Customs district. Thus, a licenseholder may have several permits depending upon the number of districts in which he conducts business.

The committee, in this legislation, is imposing an annual fee for each permit that is issued pursuant to Public Law 98-573. It is through a fee on permits that the committee hopes to defray the cost of regulating the customs brokers industry. We believe that the number of permits issued is a good measure of the range of activities that must be regulated. Where a broker has three permits it indicates that he has three separate business activities in three geographically separated districts.

Mr. BAUCUS. I agree with that analysis. However, does the committee also contemplate a separate fee on licenses?

Mr. PACKWOOD. Yes; the committee anticipates that Customs will charge a one-time fee for the issuance of a brokers license and accompanying permits, in addition to the annual fee authorized by this bill. We understand that Customs will charge a one-time fee of $300 for licenses and $100 for permits. The committee expects that Customs will confine itself to these one-time fees on brokers and avoid arbitrarily increasing the amounts charged.

"IN-BOND TRANSPORTATION" USER FEE

Mr. MOYNIHAN. The report of the Finance Committee describes the fee on "in-bond transportation" as a one-time charge on merchandise moving from one port-of-entry to another. Am I correct that this fee may be paid when merchandise is released for entry into a bonded warehouse, foreign-trade zone, or other bonded facility at the port-of-entry in anticipation of its later in-bond movement to another port, in which case the fee would not apply to any subsequent movements of the merchandise?

Mr. PACKWOOD. Yes; the Senator is correct in his interpretation. The committee intends that the party entering the merchandise into a bonded warehouse, foreign-trade zone, or other bonded facility be permitted to pay the fee upon entry or upon subsequent port-to-port transportation.

AIRLINE RELATED SERVICES

Mr. WILSON. I rise today to express a concern that I have, which is technical in nature, regarding the budget reconciliation bill, S. 1730. Specifically, my concern relates to the tax treatment of airline employee fringe benefits. I am hopeful that we can clear up an ambiquity that could cause employees engaged in the all important task of aircraft maintenace to be unfairly taxed on their fringe benefits.

Persons are taxed on their gross incomes, which generally includes the value of employer provided fringe benefits. However, under the Deficit Reduction Act of 1984, certain fringe benefits by an employer on a nondiscriminatory basis are excluded from the recipient's gross income for income tax purposes. These tax-exempt fringe benefits include no additional cost services and qualified employee discounts. Both of these exceptions have so-called line of business requirements.

In other words, a fringe benefit, to be nontaxable, must be a service that is sold to the public in the line of business of the employer for which the employee is performing services. Thus, a flight attendant could receive nontaxable flight privileges from her airline employer, but would have to pay taxes on hotel privileges that she received from her employer, even if that employer operated a hotel chain.

However, S. 1730 currently provides a special rule to allow employees of an airline subsidiary to receive tax-free flight benefits if the subsidiary performs airline-related services. "Airline-related services" means any of the following services in connection with commercial air transportation: First, catering; second, baggage handling; third, ticketing and reservations; fourth, flight planning and weather analysis; fifth, restaurants located at an airport and gift shops located at an airport; sixth, such other similar services provided to airlines as may be prescribed by Treasury regulations.

Aircraft maintenance services are not specifically included in the listing of airline-related services. This omission could cause certain employees to be unjustly treated under our tax laws.

For example, PSA is an airline based in California, whose wholly owned subsidiary PSA Airmotive performs the engine overhaul on the PSA planes. For all practical purposes, PSA Airmotive employees are the functional equivalent of PSA employees. In fact, employees of both entities are covered by the same collective bargaining agreement with the International Brotherhood of Teamsters. Thus, it would be unfair not to allow these employees to receive the tax-free treatment of their flight privileges as do their coworkers at PSA.

I am confident that it was the intent of the Finance Committee to give those employees who work for airline subsidiaries that perform aircraft maintenance the same benefits as their coworkers who work directly for the airline.

Mr. PACKWOOD. The Senator from California is correct. Certainly,

we would not list all conceivable airline-related services in the legislation. However, we might have included a fuller description of the committee's proposed change to the Tax Code to make clear that aircraft maintenance workers, even if employed by an air carrier's subsidiary, should not be taxed for receipt of flight privileges. The statement offered by the Senator from California does clarify the scope of the section 783 in this regard. I thank the distinguished Senator for pointing out this ambiguity, and I hope we have cleared up this matter.

EVANS AMENDMENT NO. 1031

● Mr. BOSCHWITZ. Mr. President, I oppose the provision in Senator EVANS' amendment that would place a 2-year moratorium on the collection of error rate sanctions from the States.

A moratorium sends the wrong signal to the States and ultimately threatens the integrity of the Food Stamp Program. A moratorium indicates to the States that the Federal Government is not serious about reducing the error rates in the Food Stamp Program and requiring the States to assist in that effort.

In 1982, under the leadership of Senator DOLE, we enacted a provision that required States to gradually lower their error rates. In fiscal year 1983 States were allowed to have an error rate at or below 9 percent, in fiscal year 1984, the States had to reduce their error rates to 7 percent, and in fiscal year 1985, the tolerated error rate was lowered to 5 percent. As of the date of the enactment of that reauthorization of the Food Stamp Act in 1982 the Federal Government put States on notice that we were serious about controlling errors and holding States accountable for error rates over 5 percent. The moratorium would have the effect of forgiving, at least temporarily, errors that were made as long as 4 years ago, at error rates over 9 percent, that States have known they were responsible for paying.

Besides losing the interest on that money during the 2 years, which the Federal Government can ill afford to lose, I am also concerned about the feasibility of that money ever being collected. If the States are telling us they can't afford to pay 1 year's sanctions, are they going to be able to pay 3 year's at once?

A moratorium would not help one food stamp recipient. The only beneficiaries of this moratorium are State treasuries. In reality, every dollar issued in error is $1 less in benefits going to a deserving recipient. To the extent error rates rise, or do not fall, as a result of this amendment, food stamp recipients are losing food stamp benefits.

There may be some objection from the States to my implication that error rates will rise if there is a moratorium on sanctions. However, the clear signal to the States of a moratorium combined with a study of the error rate sanction system is that a more lenient system will be designed, the Federal Government is not serious about collecting error rate sanctions, and States should not be concerned. A moratorium implies that the problems in the system are so serious that it's necessary to abandon all efforts to make the current system work for at least 2 years.

The argument has been made that this moratorium is necessary to treat the Food Stamp Program consistent with the way AFDC and Medicaid are treated in the reconciliation bill. Food stamps is a very different program from AFDC and Medicaid. The tolerated error rate in AFDC and Medicaid is only 3 percent, as opposed to 5 percent in food stamps. AFDC counts technical errors—like not having a recipient's Social Security number recorded—that do not result in overissuances, Food stamps do not. Most significantly, food stamps is totally federally funded, any dollars issued in error are dollars out of the Federal Treasury. In contrast, in AFDC and Medicaid the States share the costs of the program and payments made in error represents money lost by the States. States have limited resources, to be pragmatic they will focus the State resources on lowering error rates where they feel the pinch, in Medicaid and AFDC. In the Food Stamp Program, error rate sanctions are the only means we have of holding States accountable for errors where in Medicaid and AFDC they are held accountable for errors even during a moratorium on sanctions through the States cost sharing of these programs.

I am not arguing that we have in place a perfect error rate sanction and quality control system in the Food Stamp Program. In fact, we would be well advised to take Senator EVANS' suggestion of conducting a study of the system. But, I think a moratorium does nothing to improve the system and goes a long way toward threatening the integrity of the entire Food Stamp Program. Right or wrong, the Food Stamp Program has had the reputation of being fraught with errors, backing off on efforts to control those errors threatens the reputation and political support for the program.●

Mr. ARMSTRONG. Mr. President, section 783 of the Consolidated Omnibus Budget Reconciliation Act of 1985, S. 1730, includes provisions substantially similar to legislation I introduced on May 8 of this year that will restore for parents of airline employees their privilege of flying on a tax-free basis. Last year the Congress enacted the Deficit Reduction Act of 1984 and among its many provisions was one that eliminated parents from what had been a long tradition where airlines had considered parents to be within the immediate family of an airline employee and therefore provided them with air travel privileges on a seat available basis.

The consequence of this small change in tax law, of "negligible" revenue impact—as reported by the Joint Tax Committee in December 1984—is larger than it may appear. Some airlines have ended their reciprocal agreements that established the rights of interline air travel by parents of airline employees. This small change in law has, in combination with the withholding requirements and the high valuation of the temporary IRS regulation, contributed to the reduction or elimination of this fringe benefits that airlines voluntarily provided and from all my information, would like to be able to continue to provide.

Employees of airlines and the air carriers themselves have been through some difficult times and the availability of fringe benefits for employees and their families is an important benefit and attraction to current and potential employees. For some employees who can do little else for their parents except being able to provide them with free or reduced cost air travel on a space available basis, the congressional actions of last year were an unwelcome change. The change was unnecessary in my opinion and achieves little except to disrupt the beneficial practices of the commercial airline industry.

To make matters worse, the IRS issued temporary regulations on January 7 that impute the value of parental travel on airlines to be 50 percent of the regular coach fare on the day of travel. That imputed value is added to the employee's "income" and taxed. Employees in the 50 percent tax bracket that are taxed on 50 percent of the value of the coach fare consequently pay a tax that amounts to 25 percent of the regular coach fare. This valuation is too high. The cost of traveling from New York to Los Angeles for the period from February 18, 1985 to March 30, 1985 shows that all major airlines provided an ultra super saver fare that is just 28 percent of coach fare. For many there is no fringe benefit left due to the tax implications.

The legislation that I introduced would again place parents on the same basis as the spouse or dependents of an employee when air travel is provided as a fringe benefit by the airline. As with the employee, this service must be a "no additional cost service" to the air carrier in order for it to remain tax free. This means that the employee, spouse, parent, or dependent children can fly only if the seats were otherwise going to remain unused on the flight.

In treating the parent on an equal basis with other dependents of the employees, this bill does not interfere with reciprocal agreements and the airlines can, if they so choose, enter into reciprocal agreements with regard to parental air travel where the employers bear no substantial cost and the airline does not lose revenue as a result.

Section 783 of S. 1730, as approved by the Senate Finance Committee by

an 11 to 7 vote, will put parents of the airline employee in the same category as spouses and dependent children and will do so for online and interline *travel* as my legislation proposed.

In concluding Mr. President, this bill corrects legislation that was unnecessary, which raised essentially no revenue, which has had unintended affects that have disrupted a legitimate fringe benefit offered to parents of airline employees.

NONPROFIT MAIL SUBSIDIES

Mr. METZENBAUM. Mr. President, I rise to discuss a matter contained in S. 1730 dealing with nonprofit mail subsidies. Earlier this week, the Senate adopted an amendment expanding upon the reconciliation bill's requirement that the Postal Rate Commission study third-class nonprofit mail subsidies. The amendment that was adopted will require the Postal Rate Commission to include second- and fourth-class mail subsidies in their study.

My concerns deal with the postal subsidy section of the reconciliation bill as well.

Mr. President, I wish to direct my inquiry to the Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. Mr. President, I will be happy to respond to the Senator from Ohio.

Mr. METZENBAUM. Referring to title VIII of S. 1730, I understand that sections 804 through 807 of this title are designed to make certain eligibility changes or restrictions as to which mailers or types of mailings can qualify for the partially subsidized reduced postage rates.

Mr. STEVENS. The Senator from Ohio is correct in his understanding of the general purposes of sections 804 through 807 of the Budget Reconciliation Act.

Mr. METZENBAUM. Now, I would like to ask my distinguished colleague, with reference to section 804, is it the Senator's or the committee's intent to impose a 50-percent cap on the authorization of appropriations for all third-class nonprofit mail or only on certain mail which falls within that class?

Mr. STEVENS. The 50-percent cap on the authorization would apply only to a distinct type of commercially oriented mailings which are now made with a taxpayer subsidy at the regular third-class nonprofit rates. With the limitation of this cap, the committee seeks to curb unwarranted use of the nonprofit postage rates caused by for-profit entities who further their commercial interests by means of nonprofit postage rates.

As the report of the Budget Committee indicates, we expect that the cap on the authorization for commercially-oriented mail sent with nonprofit postage will save $35 million in the Revenue Forgone appropriation to the Postage Service during fiscal year 1987 and $38 million in the appropriation for Revenue Forgone during fiscal year 1988. While this savings is significant, it is only a small portion of the subsidy which is now devoted to third-class nonprofit mailings. The savings will be achieved by curbing the current practice of using nonprofit postage for commercial mailings.

Mr. METZENBAUM. Bearing that explanation in mind, is it further the intent of the Senator from Alaska or the committee's intent to place a 50-percent cap on the authorization for mail of a qualified nonprofit entity when the purpose of the mailing is to convey the services of that entity or to solicit financial support for that entity? I raise this question in view of the language of section 804 which seems to suggest that the 50-percent cap on the authorization would apply to any mail which promotes or announces the availability of any article or service.

For example, would a library sending a newsletter containing information about the services of the library be subject to a higher postage rate for that newsletter by virtue of the 50-percent cap? Would an association of the blind which conducts a mailing describing its services for the blind be subject to a higher postage rate under this provision? Perhaps the Senator from Alaska could describe the intent of section 804 with reference to these and similar specific circumstances.

Mr. STEVENS. In the cases that the Senator has mentioned and for the types of mailings he has described, it would not be our intent that such organizations or their mailings would be subject to the 50-percent cap established by section 804. In other words, these mailings would not be affected by virtue of this section since there is no commercial purpose or interest involved in the mailings.

Mr. METZENBAUM. Then could the Senator explain further his intent or the committee's intent as to which types of mailers or mailings would fall within the 50-percent cap on the authorization for nonprofit third-class mail?

Mr. STEVENS. I will be happy to explain. The mail which would be subject to the 50-percent cap under section 804 of the Budget Reconciliation Act would be any mail of a nonprofit entity which actually promotes a commercial, for-profit interest or enterprise.

For example, the commercial sale of travel arrangements or insurance under nonprofit postage would be subject to a higher rate than mail which promotes the services of a nonprofit group. The committee's intent is that for-profit commercial interests should not be allowed to conduct sales or advertising with the Federal subsidy accorded to nonprofit organizations or institutions.

We do not intend that a nonprofit group would necessarily be subject to paying higher postage if items of value are included in its mailing. But, if such a group were to conduct a mailing which advertises or sells products that a commercial enterprise is making available through that group, we would consider such a mailing to benefit a for-profit commercial enterprise, at least in part. The committee merely chose to apply 50 percent cap on unwarranted commercialized uses of nonprofit postage.

Mr. METZENBAUM. I thank my colleague for that response. That is helpful. Now I would like also to inquire if it is a correct understanding that the study and report required by subsection (b) of section 804 must be completed and the results made available to Congress in time for us to act on the recommendations prior to October 1, 1986.

Mr. STEVENS. We have already begun discussions with the Postal Rate Commission to assure that their study and report can be concluded in approximately 6 months. Based on these discussions, I believe that the Rate Commission will be able to provide us with its report and recommendations on or about the first of June next year. Upon receiving that report, our postal subcommittee, which I chair, will hold a hearing. Meanwhile, our subcommittee will continue to monitor this process so we can be ready to expeditiously report legislation resulting from it. I expect the House will do the same.

Mr. METZENBAUM. What is the Senator's understanding with respect to subsection (a) of section 804, the cap on the authorization for certain commercialized mailings which we have discussed would become effective on October 1, 1986, if there are no changes in law by that time more clearly defining which mailings must go at a higher rate. Some are concerned that the Postal Service, on its own, will decide which mailings would go at full subsidy and which mailings come under the reduced subsidy or possibly no subsidy by virtue of the cap on the authorization.

What happens if Congress does not implement legislation to instruct the Postal Service on how to comply with the 50 percent cut in commercial use of nonprofit mails?

Mr. STEVENS. It is my understanding, confirmed by the legal staff of the Postal Service and the General Counsel of the Postal Rate Commission, that the Postal Service is not given any authority to make any cuts. Rather, the Postal Service must then refer to existing law which requires the Board of Governors of the Postal Service to raise the rates for all nonprofit third class mail to comply with the cost savings required in the Budget Reconciliation. However, I have enough faith in the legislative process to believe that we will be able to pass implementing language that will be fair and just to the nonprofit mailer and the taxpayer as well as which will authorize the Postal Service to eliminate the abuse and misuse

of this Federal subsidy in the area of commercial mailings.

Mr. METZENBAUM. I thank the Senator from Alaska for his clarification.

Mr. STEVENS. I thank the Senator from Ohio.

DE CONCINI AMENDMENT NO. 1004—CUSTOMER USER FEES

Mr. GORTON. Mr. President, I am pleased to support the amendment of my colleague from Arizona. This amendment will provide for more equitable treatment of truckers in my State who do business in Canada, and for all truckers in border States. It gives operators the option of paying a $5 per-entry-fee, or a $100 annual fee, rather than requiring the $5 fee.

The trucking industry in my State faces many hardships, including an unduly large tax burden and unfair competition from Canadian truckers. Those who attempt to do business in Canada often meet highly restrictive regulations and long delays at the border. It would be highly unfair to add to that burden a $5 fee each time an operator crosses the border. While it may be justifiable to ask them to share the costs of providing personnel at the border, we should attempt to do so in the least burdensome manner possible. I feel that the amendment of the Senator from Arizona is a step in that direction.

Mr. MURKOWSKI. Mr. President, I rise to day in support of the final passage of S. 1730, the Consolidated Omnibus Budget Reconciliation Act of 1985.

I want to express my sincere gratitude to my distinguished colleagues, Senator DOMENICI and Senator CHILES, the chairman and ranking minority member of the Committee on the Budget and their staffs for their diligent and outstanding work on S. 1730. They have worked long and hard to bring this reconciliation bill to final passage by this body. Still the road ahead throughout the conference with the House is bound to present yet more challenges.

Mr. President, as the chairman of the Committee on Veterans' Affairs, I am pleased that the final passage of S. 1730, retains title XI as recommended by the Committee on Veterans' Affairs, without amendment during floor action on this bill.

The Committee on Veterans' Affairs was required by the reconciliation instructions issued pursuant 2(1) of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for fiscal year 1986, to report legislative changes which would achieve 3-year savings in both budget authority and outlays of $1.15 billion. I am pleased to state that the Committee on Veterans' Affairs recommended legislation which would achieve the required savings and in fact, has recommended legislative changes which if enacted, would result in budgetary savings over fiscal years 1986 through 1988 of $1.3 billion in budget authority and outlays, which exceeds our reconciliation instructions by $150 million.

I reiterate my belief that the growing Federal deficit is a major dilemma facing not only elected officials, but each and every taxpayer and each and every American citizen. This year, the Senate has taken great strides to meet this national dilemma head on, through the adoption of the budget resolution, the balanced budget amendment, and today, S. 1730, the reconciliation bill.

Mr. President, it is clear that the Federal deficit is a growing national problem which will not fix itself. Thus, I appreciate the unyielding efforts of my colleagues who have valiantly fought the battles this year to not only confront this dilemma, but to push on to achieve significant legislative changes to reduce the Federal deficit.

I am pleased that our Nation's veterans have contributed so significantly in this overall effort to reduce the deficit. What is perhaps the most significant, however, is the fact that the provisions recommended in title XI of S. 1730 will achieve savings fairly and equitably, without eliminating or reducing eligibility or the delivery of benefits and services furnished by the Veterans' Administration.

Mr. President, I do not intend to discuss in great detail the provisions of S. 1730 which would affect veterans. Title XI of the bill and the accompanying report 99-146 state in detail the legislative changes, an explanation of the changes, and the intent of the Committee on Veterans' Affairs. These provisions were recommended after receiving recommendations and testimony during a hearing held on June 20, 1985. The members of the committee have attempted to address the concerns expressed by many witnesses during the hearing. I would, however, like to highlight for my colleagues some of the major provisions contained in title XI of S. 1730.

TITLE XI CONSISTS OF THREE MAJOR PROVISIONS

The first provision would revise and improve eligibility and priorities for VA health care and would establish an income eligibility criterion for nonservice-connected disabled veterans who, because their income level exceeds a $25,000 threshold, would be required to contribute a modest amount to defray the cost of the VA health care furnished.

For the first time, the statute would require the VA to furnish necessary hospital care and outpatient medical services to service-connected disabled veterans for service-connected disabilities, and for the treatment of any disability of service-connected disabled veterans who have received a disability rating of 50 percent of greater. Nursing home care would be required to be furnished, if necessary, to a veteran for a service-connected disability. This reaffirms the committee's longstanding commitment that service-connected disabled veterans should should receive the highest eligibility and priority for VA health care.

All other veterans who are currently eligible for VA health care would continue to be eligible for health care on a space-available basis under S. 1730. This includes special categories of veterans and certain nonservice-connected disabled veterans whose income level would require such veterans to make a copayment for the health care furnished. Further, veterans age 65 or greater would be eligible for care in the same manner as veterans under age 65. Automatic eligibility based on age would be eliminated.

Mr. President, I feel that the uniform $25,000 income threshold included in the bill will be easier to administer by the VA than the spend-down provision originally recommended in the administration's proposal, and the multiple income threshold levels included in the House provision of H.R. 3500. Further, the substantial number of single veterans seeking VA health care will benefit by the $25,000 income threshold, compared to the lower threshold of approximatley $19,000 in the House provision. Determination of a veteran's income and assets would parallel the already existing VA pension program definitions of income and assets.

Mr. President, although the bill uses the term "may" instead of "shall" when referring to the furnishing of care to the special categories of veterans included in the bill and the nonservice-connected disabled veterans who are unable to defray the cost of necessary care, it is intended that their eligiblity for care would remain the same as under current law.

The use of the term "shall" in the bill is intended to enhance the eligibility of the specified service-connected disabled veterans rather then diminishing the status of all other categories of veterans eligible for care under current law. Senator CRANSTON and I agree that title X of the Congressional Budget and Impoundment Control Act of 1974 would continue to require that care would be provided to these other categories of veterans who are determined to need care, if resources had been appropriated and remain available.

The second provision would authorize prospectively, the United States to recover and collect from third party health insurers, the reasonable costs of health care and services furnished at the expense of the VA to nonservice-connected disabled veterans who are covered by health insurance contracts. Specific concerns raised by private health insurers regarding cost-containment measures within the VA were taken into account in S. 1730. Flexibility and safeguards in the determination of the "reasonable cost of care or services" to be recovered were recommended. Also, S. 1730 recommends limited verification review of

VA medical records to ensure that services would be provided according to the criteria of the health plan under which reimbursement is sought.

This provision would, for the first time, achieve parity between the VA and private health-care providers by authorizing reimbursement under health insurance contracts. Such reimbursement is presently barred by exclusionary clauses in insurance contracts. Recoveries under this provision are not intended in any way to reduce the annual appropriation for the VA health-care system, and all recoveries will be deposited with the U.S. Treasury.

Mr. President, I note that on October 23 during floor debate on S. 1730, the Senate adopted by voice vote, amendment No. 861, offered by Senators KENNEDY and WILSON. This amendment would authorize the United States to recover from third party insurers, the reasonable costs of medical and dental expenses incurred by the United States—Department of Defense—on behalf of military retirees and dependents. This amendment is similar to the provision contained in title XI, thus, final passage of S. 1730 will similarly authorize third party reimbursement for health care furnished by both the Department of Defense and the Veterans' Administration.

The third provision would limit the VA compensation and dependency and indemnity compensation COLA for fiscal year 1986 to a maximum of 3.7 percent, effective December 1, 1985. This is based on an updated Congressional Budget Office projection of the percentage of the Social Security and the indexed VA pension COLA, effective December 1, 1985. This provision reflects the committee's intent that the VA compensation COLA be consistent with the VA pension COLA, which is tied by law to the Social Security COLA.

Mr. President, of the $1.3 billion expected savings to be achieved between fiscal year 1986–88 by title XI, of S. 1730, $0.96 billion would be achieved through new revenue anticipated from the recovery of third party reimbursement and $0.11 billion would be achieved from the COLA limitation based on the updated cost of living projections. Thus, the balance of $0.23 billion is expected to result from the revised VA health care eligibility and implementation of the means test.

In closing, I want to collectively thank my staff and the minority staff who worked so hard through seemingly endless hours to develop the committee recommendations which have culminated in title XI of S. 1730.

I individually thank Anthony Principi, my staff director of the Committee on Veterans' Affairs, and Julie Susman, my deputy staff director. I also thank Kathleen McTighe, Cynthia Alpert, Jim Moore, Lisa Moore, Becky Hucks, Lisa Gilman, Kay Eckhardt, Jody Sanders, Judy Boertlein, and Jim MacRae. I also thank Jon Steinberg, the minority staff director, Ed Scott, Bill Brew, Babette Polzer, Nancy Billica, Ingrid Post, and Charlotte Hughes for all their outstanding work on this bill. My final thanks go to Michelle Mrdeza of the Budget Committee for all her assistance to my staff throughout the entire process.

Mr. President, I support the final passage of S. 1730 and I urge my colleagues to vote for its adoption.

TITLE XI—COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I would like to explain and discuss the provisions of title XI of the pending measure, which pertain to Veterans' Administration programs, so as to provide background for my colleagues and others with an interest in the actions of our committee to satisfy our reconciliation instructions in section 2(1) of the first concurrent resolution on the budget for fiscal year 1986, Senate Concurrent Resolution 32.

SUMMARY OF TITLE XI

Mr. President, title XI is composed of three parts as follows:

Part A, which revises certain health-care eligibility criteria and establishes a requirement for certain nonservice-connected disabled veterans to make modest payments for VA care;

Part B, which provides for recovery from health insurers of certain reasonable costs of VA-furnished care and services for veterans with health insurance coverage and with no service-connected disabilities; and

Part C, which limits to a maximum of 3.7 percent the fiscal year 1986 VA disability compensation COLA.

More specifically, these three parts would provide as follows:

PART A

First, would revise VA health-care eligibility so as to establish an entitlement for VA-furnished care—hospital, nursing home, or outpatient care—either through VA facilities or through contract or fee-basis arrangements with non-VA facilities for veterans receiving care for their service-connected disabilities or for veterans with service-connected disabilities rated at 50 percent or greater.

Second, would maintain the current law authority to furnish care to other veterans, except those with incomes above a specified level, either in VA facilities or, to a limited extent, through non-VA facilities at VA expense.

Third, would authorize the VA to furnish, within otherwise available space and resource capacity, care to veterans who have no service-connected disabilities and whose annual family incomes exceed $25,000 who agree to make certain payments—approximating payments made under Medicare—in connection with their care.

This part would also require the Administrator to follow certain priorities for furnishing VA care, with the top priorities being accorded to veterans seeking care for their service-connected conditions and other veterans with service-connected disabilities.

The Congressional Budget Office—CBO—estimates that the provisions in this part would generate net reconciliation savings of $50 million in budget authority—BA—and $47 million in outlays in fiscal year 1986, $92 million in BA and $86 million in outlays in fiscal year 1987, and $101 million in BA and $95 million in outlays in fiscal year 1988.

PART B

Would authorize the United States to collect from third-party insurers the reasonable cost of care provided by the VA to non-service-connected disabled veterans to the extent that the insurer would be liable to pay for the care if it had been furnished by a private facility. The provisions in this part would have the effect of invalidating so-called "exclusionary clauses" in health insurance contracts, which currently preclude payment for care furnished by Federal facilities, and would make the VA eligible to receive payment from a third party on the same basis that a non-VA health-care facility would be eligible. The VA's right to recover would, therefore, generally be contingent upon the agency's compliance with the terms and conditions of the law, contract, or other arrangement under which the veteran would be eligible for payment by the third party.

CBO estimates that the provisions in this part would generate net BA and outlay savings of $203 million in fiscal year 1986, $354 million in fiscal year 1987, and $403 million in fiscal year 1988.

PART C

Would limit the fiscal year 1986 VA disability compensation COLA to a maximum of 3.7 percent—the same percentage that CBO projected for the fiscal year 1986 Social Security COLA at the time our committee marked up this legislation—as compared to 4.1 percent, as assumed in the baseline.

CBO estimates that the provisions in this part would produce savings of $34 million in BA and $30 million in outlays in fiscal year 1986, $40 million in both BA and outlays in fiscal year 1987, and $39 million in both BA and outlays in fiscal year 1988.

For reasons I will describe shortly, it now appears that the amount of the compensation COLA will be 3.1 percent. If that is the case, then the result would be additional savings below baseline of approximately $51 million in BA and $46 million in outlays in fiscal year 1986 and a total of $176 million in BA and $171 million in outlays over the 3 fiscal years.

BACKGROUND

At the outset, let me state that I concur wholeheartedly that there is an absolutely critical need to restrain Federal spending so as to make major

reductions in the deficit. I did not support the conference report on the budget resolution—I voted for an alternative that would have made a deeper cut in the deficit—but a majority of my colleagues in both Houses did support the conference report. Our committee was thus under a clear mandate to act. It is essential, in understanding our committee's actions, to appreciate that if we had not met our obligations in this regard the Budget Committee would have done so. I want to stress that point to my colleagues and to others with an interest in this legislation.

In light of this background, I did my best to work in a cooperative fashion with the chairman and the other members of our committee, and I believe that we succeeded in developing legislation that is about the best way our committee could satisfy our reconciliation instructions. In fact, the legislation that we have developed would save $166 million more in budget authority and $147 million more in outlays than the required amounts over the next 3 fiscal years.

But I want to stress that our legislation would achieve this result without mandating reductions in Veterans' Administration programs. Specifically, in fiscal year 1986, $226 million in savings would come from added revenues to the Federal Government, $203 million of which would be from third-party health insurers and a net of $23 million from small copayments from nonservice-connected veterans with annual family incomes over the $25,000 income eligibility criterion in connection with their being furnished VA care. In addition, the Congressional Budget Office estimates that savings of approximately $29 million will be realized as a result of nonservice-connected veterans with family incomes about the income eligibility criterion choosing alternative sources for their health care.

The remainder of the savings—$34 million in budget authority and $30 million in outlays—would come from projecting a cost-of-living adjustment—COLA—in fiscal year 1986 of no more than 3.7 percent in the rates of VA disability compensation paid to service-connected-disabled veterans and disability and indemnity compensation paid to the survivors of those who have died from service-connected causes. That is the same percentage increase that CBO projected for the Social Security COLA, both COLA's to be effective December 1, 1985, at the time our committee marked up this legislation, September 27. It has now been officially determined that the Social Security COLA will in fact be 3.1 percent which will almost certainly be the figure our committee will recommend for the compensation COLA this year.

Thus, I believe that we have met our fiscal obligations under the budget resolution while continuing with our best efforts to keep the VA—and particularly the VA health-care system—strong and vital so that it can continue to meet the needs of those who answered their country's call in its hours of need.

This is unquestionably the most important piece of veterans' health-care legislation brought before the Senate since at least 1973, and I believe there is a need to touch on a number of aspects of it. I will, therefore, now address briefly the key elements of the legislation that is incorporated in title XI of the pending measure.

PART A: ENTITLEMENTS AND ELIGIBILITIES FOR HEALTH CARE FROM THE VETERANS' ADMINISTRATION

MODIFICATIONS OF CURRENT ELIGIBILITY CRITERIA

Part A of title XI would modify and clarify eligibility criteria for VA health care and would establish an income eligibility criterion of $25,000, so that a veteran with no service-connected disability who has annual family income above that amount in the preceding calendar year would be required to agree to make a modest payment to receive VA care.

I stress that this legislation would not bar from VA care any veteran presently eligible for VA care; nor would it make any significant change to current VA practice.

What it would do is modify the eligibility status of two categories of veterans and establish some clear, consistent statutory priorities for VA inpatient, outpatient, and nursing home care.

First, those veterans to whom we have always owed the primary obligation—veterans being treated for their service-connected disabilities and veterans with service-connected disabilities rated at 50 percent or more—would be given an entitlement to VA care, including both hospital and outpatient care as well as contract services where necessary.

Second, nonservice-connected-disabled veterans age 65 and older who have family income over $25,000 would no longer be automatically eligible for VA care without reference to their ability to pay for such care. Rather, they, along with nonservice-connected-disabled veterans under age 65 with family incomes over $25,000, would be able to pay a modest payment to the VA—in an amount generally comparable to a corresponding deductible or copayment requirement under Medicare—in order to receive VA care. The eligibility of these veterans with incomes above the $25,000 income eligibility criterion would be expressly conditioned on there being available space and resources at the VA facility where they seek care.

In determining a veteran's income for the purposes of eligibility under the new income eligibility criterion, the Administrator would be required to determine a veteran's annual income—taking into account family income—generally using the same methods and criteria used to determine annual income for the purposes of VA pension eligibility. This income eligibility determination would be made upon a veteran's first application for care each year and would be based on the veteran's family income for the calendar year immediately preceding the application for care. Such a determination would then be applicable for the balance of the calendar year.

As I noted a moment ago, if a veteran were eligible for care only by virtue of agreeing to make a payment to the VA in connection with the needed care, the payment required would be in an amount generally comparable to a corresponding deductible or copayment requirement under Medicare. However, the payments required under the committee recommended legislation would be substantially less than payment under Medicare for episodes of inpatient hospital care beyond 60 days.

Under our Committee's legislation, for each period of hospital or nursing home care up to 60 days within a single episode of care as defined in the legislation, a veteran who is provided such care by virtue of an agreement to make a payment to the VA would be required to make a payment equal to either the amount of the hospital deductible required under Medicare, which is $492 for 1986, or the actual cost of the care, whichever is the lesser. In the case of ambulatory or outpatient care, such a veteran would be required to pay an amount equal to 20 percent—the percentage that Medicare generally does not pay for such care—of the average cost of an outpatient visit in a VA facility as determined by the Administrator.

Under this payment approach, a veteran who has received 60 days of hospital or nursing home care would not be liable for any more than the actual cost of care furnished during any subsequent period within the same episode of care. For example, a veteran receiving care by virtue of having agreed to make payment to the VA who received care in a VA nursing home for 62 consecutive days would not have to make a second payment equal to the Medicare inpatient hospital deductible for the 61st and 62d day of care but rather would only make a payment equal to one such deductible and the actual cost of the two days of nursing home care after the 60th day. The current cost of such a day of care in a VA nursing home is approximately $112.

Other examples of how this payment approach would work are set forth in the committee's report language which is printed at pages 610 to 612 of Senate Report No. 99-146.

PRIORITIES

Part A would add a new section 612C to title 38, United States Code, to require the Administrator to establish statutory priorities for furnishing hospital, domiciliary, and nursing home

care and medical services, and to prescribe regulations to ensure that care and services are provided in that priority order.

Except in cases of a medical emergency, the priorities for hospital, domiciliary, and ambulatory or outpatient care would be the following:

First, veterans who require treatment for service-connected disabilities;

Second, veterans with service-connected disabilities rated at 50 percent or more;

Third, veterans with compensable service-connected disabilities rated at less than 50 percent;

Fourth, veterans who, but for the receipt of military retired pay, would be entitled to disability compensation;

Fifth, veterans who, but for a suspension in compensation paid for a disability incurred as a VA patient or as a participant in a VA vocational rehabilitation program would be entitled to disability compensation;

Sixth, veterans who were discharged from service for a disability incurred or aggravated during service or with noncompensable—that is, zero-rated—service-connected disabilities;

Seventh, veterans who are former prisoners of war, or Vietnam veterans exposed to certain toxic substances in Vietnam or veterans exposed to ionizing radiation from nuclear blasts;

Eight, Spanish-American War veterans, Mexican border period veterans, or World War I veterans, or veterans receiving VA pension who are permanently housebound or in need of aid and attendance;

Ninth, other veterans in receipt of VA pension;

Tenth, other veterans who are unable to defray the cost of healthcare; and

Eleventh, non-service-connected disabled veterans who have annual family incomes above $25,000, who are 65 years old, and who are eligible for hospital and nursing home care by virtue of agreeing to make payments to the VA.

Although unstated, this leaves the lowest priority category as being those veterans with no service-connected disabilities who have annual family incomes of over $25,000, who are under 65 years old, and who are eligible for VA care by virtue of agreeing to make payment to the VA.

With reference to nursing home care, provisions in part A would require the Administrator to prescribe regulations to establish priorities for nursing home care taking into account the level of need for such care.

Under these regulations, a veteran who, because of the nature of his or her disability, is in need of a level or type of nursing home care that is not readily available in a community nursing home with which the VA contracts in an appropriate geographic area but which is available in a VA facility would receive priority for admission to a VA-run nursing home ahead of a veteran not in need of such a level of care. Veterans in need of a level or type of nursing home care that is readily available in a contract facility in an appropriate geographic area would receive the second basic priority. Within each of these two overall priority categories of veterans, the general priority area, which I just described, would apply.

INCOME ELIGIBILITY CRITERION

With reference to the category of discretionary eligibility for veterans with annual family incomes over $25,000, I note, as did our committee in the report language it provided to the Budget Committee to accompany our recommendations which is printed in Senate Report No. 99-146, beginning on page 556, that our committee does not intend that beneficiary travel payments—which under present section 111 of title 38, United States Code, are discretionary—be paid in connection with care provided to these veterans or that generally appliances, as included in the definition of "medical services" in current section 601(6)(A)(i) of title 38, be provided to them. The committee also noted its intention that the eligibility of this category of veterans on a space-and-resources-available basis should not be taken into account for purposes of planning, budgeting, or appropriations for the VA health-care system.

Finally in this regard, our committee noted that, although a veteran with annual family income of $25,000 would generally be eligible for care or services only upon the veteran—or someone authorized to act for him or her—agreeing to pay for those services before they are provided, the VA has full authority under current section 611(b) to furnish hospital care or medical services in emergency cases and to charge appropriately for such care, and that this emergency authority would be applicable in the case of a veteran in this category of eligibility who is unable to execute such an agreement prior to the commencement of care.

Despite these proposed changes in the eligibility for VA care of veterans with incomes of $25,000 or more, this legislation reflects our ongoing concern for the older veteran. Our approach would include a priority for care for such a veteran age 65 ahead of a veteran under age 65.

I believe that the basic approach to VA health care eligibility in the reconciliation measure achieves a fair balance and represents appropriate public policy, in terms of both our national fiscal realities and our Nation's commitment to provide health care for those veterans with service-connected disabilities and to other veterans.

Our approach would fully protect the priorities for care that Congress has already established or that the VA has implemented with congressional approval, particularly for veterans with service-connected disabilities and certain other categories of veterans, such as former prisoners of war and veterans exposed to agent orange in Vietnam or to radiation from nuclear blasts.

Mr. President, our proposal can perhaps be best understood in contrast to the legislation that the administration first proposed and submitted formally in late April in connection with the fiscal year 1986 budget.

That proposal involved a $11,400 income cutoff for a single veteran and generally provided no opportunity for such a veteran above that income level to become eligible for VA care except by spending for health care major portions of his or her income above the cutoff line—and then proving such expenditures to the VA each time—I repeat, each time—VA health care was sought. That approach would have resulted in the VA turning away many sick veterans who actually would have been unable to afford the care they needed and who would be cared for by the VA under current law.

The effect of that proposal would have been that each nonservice-connected veteran seeking care on the basis of being unable to defray the cost of care would have been required to establish income eligibility each time he or she applied for care. This would have been both individually demeaning and extraordinarily burdensome for the veteran and administratively costly and difficult for the VA.

Mr. President, I announced this spring when the administration plan first surfaced that I categorically rejected that kind of administratively complicated and burdensome and generally debasing approach, and I am pleased to say that the legislation recommended by our committee bears no resemblance to that administration proposal.

In this regard, let me stress that the approach we are proposing must be viewed against the backdrop of knowing that the administration has existing authority to establish a means test and that should Congress take no action the VA would certainly do so in the totally unacceptable fashion that the VA has previously proposed.

ELIGIBILITY OF VETERANS NOT BEING GIVEN ENTITLEMENT NOR REQUIRED TO AGREE TO PAY

Mr. President, I wish to discuss the eligibility, under part A of this title, of those veterans who are in neither the new entitlement category—those veterans being furnished care for their service-connected conditions or for veterans with disabilities rated at 50 percent or greater—nor the category of nonservice-connected disabled veterans with annual family incomes of more than $25,000 who have to make some payment to receive VA care.

Mr. President, the veterans who are in neither of these two eligibility categories are, listed in the order of their priority for care under proposed new section 612C, as follows: Veterans who have a service-connected disability rated at less than 50 percent; veterans who, but for the receipt of retired pay,

would be entitled to disability compensation; veterans who are entitled to disability compensation under section 351 of title 38, as a result of suffering an injury during VA care or while pursuing a VA program of vocational rehabilitation; veterans whose discharge or release from active duty in the Armed Forces was for a disability incurred or aggravated in the line of duty; veterans who are former prisoners of war; veterans exposed to a toxic substance in Vietnam or to radiation from a nuclear detonation; veterans of the Spanish-American War, the Mexican Border period, or World War I; veterans who are in receipt of a VA pension under chapter 15 of title 38; and veterans who are unable to defray the expenses of necessary care—that is, generally veterans with annual family incomes of $25,000 or less.

For all groups of veterans in this category, eligibility for VA care remains unchanged; the VA may furnish them with such care as is determined to be reasonably necessary. Although the use of the word "may" in providing this eligibility might suggest that the VA has the discretion to elect to furnish care or not to do so, that is not the case either under current law or the provisions revised by part A.

Under current law, the Administrator does not have discretion to withhold care from an eligible veteran in one of the groups in this category if the care is found to be reasonably necessary for the veteran's disability and the VA has the capacity to provide it. This is because the amount of health care furnished by the VA is a function of the level of funds appropriated for that purpose by the Congress—funds in the account entitled "medical care"—and because all such funds, absent appropriate action under the Impoundment Control Act of 1974 precluding their availability, must be made available to be spent for the furnishing of health care by the VA.

In fiscal year 1985, the Congress appropriated nearly $9 billion for VA medical care, which was used to operate a health-care system of 172 hospitals, 116 nursing homes, and 228 outpatient clinics, which provided inpatient care for approximately 1.3 million patients and 18.7 million outpatient visits.

Thus, the eligibility to be provided to these veterans for VA care under revised sections 610 and 612, together with their priorities for such care under proposed new section 612C and continuation of approximately the current size of the system and the appropriations levels for it, generally will ensure that veterans in this category seeking VA care will continue to be able to receive such care.

I want to note, Mr. President, that I have discussed with the distinguished chairman of our committee [Mr. MURKOWSKI] the foregoing analysis of my relating to VA health-care eligibility provisions in current law and in the revisions made by part A of title XI and he has advised me of his agreement with this analysis.

VARIOUS TECHNICAL MATTERS

Finally, with reference to part A of the committee's proposed legislation, I want to touch briefly on some technical matters regarding the changes relating to VA health-care eligibility proposed in this part.

The first point I want to discuss in this regard relates to a proposed change in the wording of the title 38 sections setting forth eligibility criteria with respect to hospital care, nursing home care, domiciliary care, and medical services. Those sections currently provide eligibility for care within the limits of Veterans' Administration facilities, which is defined to include both the VA's own facilities and certain other Government facilities as well as private facilities with which the VA may contract in the circumstances specified in current section 601(4)(C) of title 38.

The legislation proposed by the committee replaces that phrase with the phrase "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title" as a more direct reference to the VA's contract authority. The use of the new terminology—and the shifting to a new section 603 of the provisions in current law section 601(4)(C) specifying the circumstances under which contract care may be furnished—are not intended to change the effect of current law but rather to achieve greater clarity on the face of the statute regarding the extent of eligibility for contract care—often referred to as fee-basis care.

This new drafting formulation is also intended to make clear—as is the drafting of section 610(a)(2) relating to nursing home care, by the use of the phrase "or as provided in section 620 of this title"—that the extent to which any fee-basis authority is provided is determined solely by what is in section 603, or section 620 as to nursing home, in conjunction with other provisions of chapter 17, and that the administrator's general authority to contract under current section 213 is not available with respect to any of these chapter 17 health-care authorities. As was pointed out in the report language that our committee submitted to the Budget Committee, the committee construes the words "within the limits" used in current law as providing the same limitation as to the nonavailability of section 213, but believes that the new formulation is more definitive and clearer in this regard.

A second technical point that I want to note regarding the provisions relating to revisions in VA health-care eligibility involves the use of the criterion of reasonably necessary in describing the care for which entitlement or eligibility is provided.

Whereas current law in some of the provisions relating to eligibility uses variously worded criteria throughout chapter 17—such as needed care, care that the veteran is in need of or necessary or appropriate care—the committee's proposed revisions use the criterion reasonably necessary on a uniform basis. The committee's use of the consistent terminology for this purpose is not intended to change the substance of current law in this respect.

PART B: RECOVERY OF THE COST OF CERTAIN HEALTH CARE AND SERVICES FURNISHED BY THE VETERANS' ADMINISTRATION

Turning to part B of the legislation in title XI—the section which would provide for the VA to recover from third-party health insurers for the cost of care provided to insured nonservice-connected veterans—my position on such legislation has been clear for many years, dating back to 1979. I believe that such legislation does not make any sense from the standpoint of sound public policy.

It is clear beyond any question that the enactment of this legislation would not reduce the overall cost of VA health care; in fact, the opposite is true because this legislation would have an inflationary impact. This is so both because each unit of health care provided by the VA for which third-party recovery is sought would now have two additional administrative components attached—each paid for by taxpayers ultimately. The third parties' costs of processing and responding to the claims would be passed on to those who pay health insurance premiums as well as taxes.

It is also clear to me that the legislation constitutes a totally unwarranted Federal Government intrusion into private contractual relationships by rewriting some of the most basic terms and conditions of marketplace commercial insurance agreements.

In this regard, I want to read excerpts from a letter written by Bernard Tresnowski, the president of the Blue Cross and Blue Shield Association, in response to a recent Washington Post editorial. This letter is about as succinct an analysis as I've ever seen of the problems with VA third-party reimbursement legislation:

The editorial failed to mention two fundamental reasons why this proposal is bad public policy.

First, the proposal violates the principle of insurance. The purpose of insurance is to protect an individual against a financial loss. Consequently, virtually all health insurance contracts provide no benefits for care for which the insured has no obligation to pay. If the proposal were enacted, the care VA facilities provide to veterans would still be furnished to them without charge, thus these individuals suffer no loss.

Second, the proposed method of shifting heretofore public responsibilities to the private sector would not permit insurers and employers to control the resulting new costs as they do when services are furnished by private health care facilities and practitioners.

Employers and insurers are encouraging enrollment in preferred provider organizations, HMO's, and other alternative delivery systems. Many of these approaches rely on

the use of cost-sharing to persuade patients to seek care in the most cost-effective setting. Furthermore, cost-sharing provides incentives for patients to participate in ambulatory surgery, second surgical opinion, and preadmission review programs and can be an effective way to discourage unnecessary use of health care services. For providers of care, the dynamics of the health care marketplace, supported by the terms of the contractual arrangements with payers, provide the necessary incentives for participation in cost containment programs. Those who administer health benefits have learned from experience that both the patient and the provider of care must have incentives to control costs. A mandate for payment for care in VA facilities, where these incentives would not apply, would totally negate effective private sector efforts to contain health care costs.

• • • This proposal would neither improve the efficiency of the VA system nor the quality of care received by veterans. In fact, because of the increased administrative costs that would be incurred both by the VA and the private sector, the proposal would actually increase the total costs of providing care to veterans.

Mr. President, the point that Mr. Tresnowski has made, and that I believe is so well founded, that this legislation violates fundamental principles of insurance, could not be made more clear than by reading the provision in the legislation—section 629(a)(3)(A) of title 38, United States Code, as it would be revised by section 1111 of the pending measure—to permit the VA to collect under an insurance contract even where the policy is expressly contingent on the insured having satisfied a deductible or paid a copayment and the insured veteran has not satisfied those requirements. Plainly and simply, this provision proposes to rewrite insurance contracts to give the VA a right to collect in situations in which other health care entities could not. Equally as clearly, without this provision, this third-party reimbursement legislation would not work at all.

What has become irresistible about this legislation is the savings estimate it yields and the opportunity to point a finger at someone else, the health insurance companies, and say that they are not bearing their fair share of costs. On this latter score, let me reiterate what I have said since 1979—no one has been able to demonstrate that insurance companies have had any windfall from the exclusionary clauses. Rather, these clauses reflect standard, sound insurance theory and practice.

However, our committee was faced with very significant reconciliation instructions, and being credited by the Congressional Budget Office for recovering $960 million over 3 years—a hopelessly optimistic projection, I might add—through the enactment of such legislation made this an option the committee simply could not refuse.

In view of the inevitability of the committee's approval of some kind of legislation in this area, I did my best to attempt to help craft it in such a way as to make it as workable and as fair as possible. In this effort, I consulted closely with representatives of various third-party insurers and others with an interest in the legislation.

I would like to highlight two very significant points that are appropriately addressed in part B.

First, the language providing for the right of recovery of the cost of care to the extent that the veteran or a non-Federal provider would be eligible to receive payment generally leaves the Federal Government's right to recover contingent upon compliance with the terms and conditions of the law, contract, or other arrangement under which the veteran would be eligible for payment by the third party. Only where the proposed legislation specifically overrides such terms or conditions—the provision in the legislation nullifying preclusions of liability for VA care and the provision I have just cited providing for recovery despite a deductible or copayment not being met—would such requirements be avoided. Thus, contract requirements conditioning the third-party's liability—such as for prehospitalization screening, second opinions prior to surgery, or other specified utilization review procedures—would apply. Likewise, provisions imposing general limitations on the third party's liability—such as contract clauses placing specific dollar limits on payments for certain procedures, limiting a carrier's liability to a percentage of certain charges, or, as in the case of health maintenance organizations, limiting coverage to care provided in specific facilities—would apply. Our committee report language—as printed on pages 577 and 578 and pages 627 and 628 of Senate Report No. 99-146—makes these points clearly.

Second, VA health care appropriations are not to be reduced in anticipation of collections. Rather, revenues received will be remitted directly to the Treasury to reduce the deficit. Without this provision, which was not contained in prior administration's legislative proposals, I could and would never agree to this legislation since deposit of the collected revenues in the VA medical care account would lead to reductions in that appropriation being made up front based on anticipated revenues. The effect of this approach would be to hold the system hostage for a result it could in no way ensure—that insurers would agree to these payments and that the payments would be forthcoming at certain levels fairly readily and expeditiously. Indeed, there is significant question in my mind as to whether any appreciable revenue will be produced by the provisions in part B for several years after enactment, if that early.

PART C: LIMITATION ON VA COMPENSATION COST-OF-LIVING ADJUSTMENT LEGISLATION

Mr. President, part C of the legislation recommended by the Veterans' Affairs Committee would limit any fiscal year 1986 increase in rates for disability compensation, additional compensation for dependents, the clothing allowance paid to certain service-connected disabled veterans, dependency and indemnity compensation—DIC—paid to certain surviving spouses and children of deceased veterans or servicemembers, and supplemental DIC paid to the surviving children of certain deceased veterans. This provision would require that none of the rates be increased during fiscal year 1986 by more than 3.7 percent—the same percentage that CBO projected for the fiscal year 1986 Social Security COLA at the time our committee marked up this legislation—as compared to 4.1 percent, the rate assumed in the baseline which is reflected in the first concurrent resolution on the budget for fiscal year 1986. As I noted earlier it has now been officially determined that the Social Security COLA will in fact be 3.1 percent.

CONCLUSION

As I noted at the outset of my remarks, I believe that we have succeeded in developing legislation that is the best way our committee could satisfy our reconciliation instructions. It is important to note that our legislation would achieve this result without mandating reductions in VA programs. Thus, I believe that we can take credit for meeting our obligations in light of the Nation's fiscal situation while continuing with our best efforts to enable the VA—and particularly the VA health-care system—to continue in its tradition of meeting the needs of our Nation's sick and disabled veterans.

TITLE VIII—POSTAL SERVICE

Mr. ABDNOR. Mr. President, I would like to inquire of the Senator from Alaska concerning the study the Postal Rate Commission [PRC] would conduct pursuant to section 804(b).

Mr. STEVENS. Mr. President, I would be most pleased to respond to the Senator from South Dakota.

Mr. ABDNOR. My inquiry concerns the meaning of paragraph (2) and section 804(b) which states:

In preparing the report required by paragraph (1), the Commission shall invite and consider the views of all interested parties.

Does the Senator from Alaska construe paragraph (2) to include public hearings as part of the mandate to the Commission?

Mr. STEVENS. The clear intent is that the Commission will hold public hearings on the record as part of its responsibilities contained in paragraph (2).

Mr. ABDNOR. I thank the Senator for this clarification. I think hearings before the Commission are important in order to comply with the directive set forth in paragraph (2).

If the Commission were to hold hearings only in Washington, however, it would preclude small- and medium-sized nonprofit organizations—even large organizations—from the great State of South Dakota from testifying.

Given the purpose of this study and the potential impact that the PRC's recommendations may have on nonprofit organizations, I would like to inquire further of the Senator whether he envisions that the Commission would also hold several regional hearings as part of its responsibilities under paragraph (2)?

Mr. STEVENS. It is not the intent of this Senator that the public hearing record should be limited to only those interested parties that are located in the Greater Metropolitan Washington area or that can afford to travel to Washington.

Since this hearing record will serve as the basis to make recommendations to deny the nonprofit mailing privilege to certain types of third-class mail, let the record be absolutely clear: We intend that the Commission afford an opportunity for as many interested parties as possible throughout the country to testify in person.

We do not want a hearing record that consists only of nonprofit and commercial mailers that can afford to testify in Washington. Furthermore, we have been assured, informally, by the Postal Rate Commission that not only would field hearings be held but even those who cannot testify in person can write the Rate Commission and have their comments considered.

Mr. ABDNOR. I thank the Senator from Alaska for the benefit of his views on this important question. Nonprofit organizations feel that they have a great deal at stake in this study. The Senator's clarification should reassure them that their views will be heard. They will have their day in court.

Mr. STEVENS. I thank the Senator from South Dakota.

NOTICE

Incomplete record of Senate proceedings. Except for the following matter Senate proceedings for today will be continued in Part II.

ORDERS FOR MONDAY, NOVEMBER 18, 1985

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate convenes at 11 a.m. on Monday, November 18, 1985, the reading of the Journal be dispensed with; that no resolutions come over under the rule; that the call of the calendar be dispensed with; and, following the recognition of the two leaders under the standing order, there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes, to be followed by a period for the transaction of routine morning business, not to extend beyond the hour of 12 noon, with Senators permitted to speak therein for not more than 5 minutes each; provided further, that morning hour be deemed to have expired.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Would the distinguished majority leader at this time reserve 15 minutes for Mr. ROCKEFELLER on Tuesday morning and 15 minutes for me which I will yield to Mr. ROCKEFELLER on Tuesday morning?

Mr. DOLE. Yes. I add that request.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, as previously agreed, the Senate will convene at 11 a.m., following adjournment, on Monday, November 18. The two leaders under the standing order will have 10 minutes each. There will be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes, followed by routine morning business not to extend beyond 12 noon. The Senate will resume consideration of S. 1714, the farm bill, in the afternoon.

I will indicate to my colleagues I expect considerable debate on that bill on Monday. I would guess that votes, if there are any, will occur sometime after 3 p.m. I cannot assure Members there will be no votes, but I will say at the outset there may be one or two votes on Monday but they will not come early because I know a number of Senators have yet to make opening statements on the legislation.

ADJOURNMENT UNTIL MONDAY, NOVEMBER 18, 1985

Mr. DOLE. Mr. President, I move the Senate stand in adjournment until 11 a.m. on Monday, November 18, 1985.

The motion was agreed to; and, at 10:27 p.m., the Senate adjourned until Monday, November 18, 1985, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate November 14, 1985:

DEPARTMENT OF DEFENSE

Russell A. Rourke, of Maryland, to be Secretary of the Air Force, vice Verne Orr.

THE JUDICIARY

Duross Fitzpatrick, of Georgia, to be U.S. district judge for the middle district of Georgia, vice a new position created by Public Law 98-353, approved July 10, 1984.

DEPARTMENT OF THE INTERIOR

C. Dale Duvall, of Washington, to be Commissioner of Reclamation, vice Robert N. Broadbent.

DEPARTMENT OF ENERGY

John C. Layton, of Virginia, to be Inspector General of the Department of Energy, vice James R. Richards.

David M.L. Lindahl, of Virginia, to be Director of the Office of Alcohol Fuels, vice James G. Stearns, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 14, 1985:

NATIONAL CONSUMER COOPERATIVE BANK

Robert L. Thompson, an Assistant Secretary of Agriculture, to be a Member of the Board of Directors of the National Consumer Cooperative Bank for a term of 3 years.

DEPARTMENT OF LABOR

Dennis Miles Kass, of New York, to be an Assistant Secretary of Labor.

DEPARTMENT OF STATE

Roger Kirk, of the District of Columbia, a career member of the Senior Foreign Service, class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Republic of Romania.

Joseph Verner Reed, of Connecticut, to be the representative of the United States of America on the Economic and Social Council of the United Nations, with the rank of Ambassador.

Robert L. Barry, of New Hampshire, a career member of the Senior Foreign Service, class of Career Minister, for the rank of Ambassador during the tenure of his service as U.S. representative to the Conference on Confidence and Security Building Measures and Disarmament in Europe.

The following-named career member of the Senior Foreign Service, class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period:

Richard W. Murphy, of Maryland.

THE JUDICIARY

Carolyn Miller Parr, of Maryland, to be a judge of the U.S. Tax Court for a term expiring 15 years after she takes office.

B. John Williams, Jr., of Virginia, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

DEPARTMENT OF THE TREASURY

George D. Gould, of New York, to be Under Secretary of the Treasury.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

United States of America

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, THURSDAY, NOVEMBER 14, 1985 No. 157—Part II

Senate

(Legislative day of Tuesday, November 12, 1985)

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

(Continued)

TASK FORCE ON LONG-TERM CARE

● Mr. WILSON. I rise to commend the committee's tremendous efforts in placing before the Senate a reconciliation package making difficult but necessary choices. However, contained within the House package is a proposal which lays the foundation for successful cost containment through planning and discussion with beneficiaries, the Federal Government, and the private sector. This concept ought not to be overlooked by my colleagues during conference. I refer here to the establishment of a task force on long-term care health policies. The primary charge to the task force is to develop guidelines for long-term health care policies. Such guidelines are to be designed to achieve four goals: First, to assure responsible marketing practices and agent sales; second, to assure the dissemination of adequate information to allow informed consumer choice and to reduce the purchase of duplicative coverage; third, to assure a reasonable relationship between premiums charged and benefits provided; and fourth, to promote the development and availability of policies that meet the guidelines developed by the task force.

It is increasingly apparent that significant programmatic and financing changes in the post-acute-care system are developing in isolation from, and at cross purposes to, one another. The development of a task force designed to bring together the major players in this system; namely, the insurance industry, long-term care providers, and beneficiaries and consumers, is an idea which is timely, given the remarkable changes in the aging pattern of this Nation.

Only a small part of the cost of long-term care for the elderly is paid for by private insurance and other pooled risk private mechanisms. Over half is paid by Government programs; almost all the rest must be met by individuals and families from their income and savings. What is tragic is the "spend-down" phenomenon, where, to be eligible for Government programs that pay for nursing care beyond the initial hundred days under Medicare, individuals must have used all their assets. To avoid this drain upon spouses and families, I believe that the elderly should have the option of planning for the possibility of long-term disability. To create these options, there must be a focus upon this issue, as we find in the long-term care task force.

Mr. PACKWOOD. I thank my colleague for his expression of support for the task force proposal contained in the House reconciliation package. I share your concern and I will keep it in mind when we meet to consider this matter in conference with the House.●

RECONCILIATION—ATTORNEYS' FEES PROVISIONS

Mr. BAUCUS. Mr. President, section 799 of our reconciliation bill extends and reforms the attorneys' fees provisions of Tax Code section 7430. I would like to explain the importance of this provision, which Senator GRASSLEY and I offered as an amendment during the Finance Committee's reconciliation markup.

BACKGROUND

Before 1980, the so-called American rule prevented small businesses and other taxpayers from recovering their litigation costs, even if they prevailed against the Government and the Government's position had been unreasonable.

In 1980, Congress responded to this unfair situation by enacting the Equal Access to Justice Act, which provides that parties prevailing in certain civil litigation against the Government can recover their attorneys' fees and other litigation expenses, unless the Government demonstrates that its position was "substantially justified." However, EAJA did not apply to the Tax Court, where about 80 percent of civil tax litigation occurs.

In the 97th Congress, Congress responded by enacting an amendment, to the Tax Equity and Fiscal Responsibility Act, which added an attorneys' fees provision as Tax Code section 7430. Briefly stated, section 7430 permits a prevailing taxpayer to recover up to $25,000 in attorneys' fees and other litigation expenses from the IRS if the taxpayer demonstrates that the IRS's position was unreasonable.

In its 26 months of operation up to April 15, 1985, 20 awards have been made under section 7430, with an average award of $7,037. The total outlay was $140,000.

Both the EAJA and section 7430 were scheduled to expire at the end of this year. In the last Congress, the Senate passed legislation reauthorizing and improving both. The House, however, balked at the section 7430 provisions. Eventually they were deleted, and a simple EAJA bill was sent to President Reagan, who vetoed it over a relatively technical issue. This year, that issue was quickly worked out, and in July another EAJA bill was passed and signed into law. The section 7430 provisions, however, are still set to expire.

CURRENT LEGISLATION

On July 29, I introduced the Small Business Tax Simplification and Taxpayer Protection Act, along with Senators GRASSLEY, BENTSEN, BOREN, PRYOR, ARMSTRONG, and MITCHELL. Section 4 of this bill would reauthorize section 7430 and make it permanent. It also would make several changes in the law, to conform section 7430 more closely to the EAJA.

During the Finance Committee's reconciliation markup, Senator GRASSLEY and I offered the S. 1513 attorneys' fees provision as an amendment. It was adopted by voice vote, and com-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

prises section 799 of the reconciliation bill.

MODIFICATIONS

Our provision modifies section 7430 several ways. The first modification relates to the standard of proof. The EAJA allows prevailing parties to recover attorneys' fees is they can show that the Government's position was "unjustified." Current section 7430, in contrast, allows prevailing taxpayers to recover if they can show that the Government's position was unreasonable.

I'm not enough of a semanticist—or metaphysician—to understand whether there really is a difference between these two standards. But some courts have concluded that the tax case standard is slightly lower and hence favors the Government more. I see no practical reason for subjecting the IRS to a lower standard of conduct than all other agencies. And having different standards promotes uncertainty and confusion. Therefore, our amendment conforms tax cases to other cases, by applying the substantially justified standard. An identical provision passed the Senate last year.

The second modification relates to the burden of proof. In tax cases, the taxpayer bears the burden of proof on the merits. Under section 7430, a taxpayer who substantially prevails also bears the burden of proof recovering attorneys' fees. In contrast, in ordinary fee proceedings, the Government bears the burden of proof—of proving that its conduct was substantially justified. Our amendment would conform tax cases to all other cases. The taxpayer still would bear the burden of proof on the merits. But, in the fee portion of the case, the burden would shift to the Government—to prove that its action was substantially justified. This modification, which is identical to a provision that passed the Senate last year, does not alter the ordinary rule that the taxpayer bears the burden of proof in the case on the merits. Rather, it just treats fee disputes in tax cases like fee disputes in all other cases. The Government—which has access to the information justifying its action—bears the initial burden.

The third modification relates to the definition of the "position of the United States" subject to scrutiny in a fee case. Current section 7430 defines this as the position taken by the IRS "in the civil proceedings" themselves. Courts are split over whether this permits an inquiry into the action that initiated the dispute—for example, the issuance and administrative litigation of a deficiency notice. In the cases that have held that the definition does not permit such an inquiry, it has led to an unjust result. For example, one court has refused to consider awarding attorneys' fees incurred during administrative proceedings because the Government reversed its position and consented to a judgment for the taxpayer 1 day before answering the complaint. The court said that "although this court is sympathetic with plaintiff's concern that the Government should be required to set reasonably both in litigation and in its administrative proceedings, to consider the Government's administrative position in determining whether to award fees and costs * * * would be clearly contrary to the specific wording of section 7430." And another court has held that fees could not be awarded because the IRS consented to judgment for the taxpayer shortly after litigation began, even though "clearly, the position of the IRS in the underlying case was unreasonable."

The same dispute arose over identical language in the old version of the EAJA. We cleared it up in the version we just passed, by providing that the inquiry does apply to the prelitigating position. We should do the same for tax cases. To accomplish this, our amendment expands section 7430 to permit the court to consider not only the position the Government took in the civil litigation itself, but also the agency action or failure to act which led to the litigation. This conforms to the new EAJA standard, and is similar to a provision the Senate passed last year.

The fourth modification relates to the award cap. Neither the old nor the new version of EAJA contained a cap. The current version of section 7430 does. Our amendment replaces the current $25,000 cap with a system like the EAJA system, which instead limits hourly attorneys' and experts rates.

All told, our amendment is estimated to cost about $2 million a year. To put this estimate in context, the existing version of section 7430 was estimated to cost about $5 million a year, and actually has cost a total of $140,000 over 26 months.

THE TREASURY ARGUMENT

Mr. President, the Treasury has repeatedly argued against the modifications our amendment makes, contending that such modifications overlook distinctions between tax cases and other civil cases and will increase the Tax Court backlog. The best response to these arguments comes from law professor Louise Hill. In this week's edition of Tax Notes, Professor Hill explains the background of the EAJA and section 7430 provisions and the proposed modifications to section 7430. Then she analyzes Treasury's arguments, concluding that:

If it is felt that the tax case situation is unique and distinctive enough from a procedural perspective to warrant separate legislation, then separate legislation is appropriate. Clearly, TEFRA's provisions regarding exhaustion of administrative remedies, declaratory judgments, and the amount of the tax liability in controversy are tailored well to the tax case situation. However, what does not appear to be appropriate is lacing that separate legislation with standards that are more stringent than those which apply to civil litigation in general.

With the reconsideration of cost and fee awards in TEFRA coming close in time to when legislation reauthorizing the EAJA has been implemented, Congress has an ideal opportunity to approach TEFRA with a view toward equalizing its applicable standards to that of the EAJA. It stands to reason that a litigant in a tax case should not have a more difficult burden upon him to quality for costs and fees against the government, or to be limited in the amount of cost or fee awards, than any other party in a civil action against the federal government. It is incumbent upon Congress to determine what threshold qualifications are necessary for a party to be eligible for a fee award from the federal government. Upon such a determination, it is incumbent upon Congress to see that those threshold qualifications are applied uniformly to all parties in a civil law suit in which the United States is a party.

Mr. President, section 799 of our reconciliation bill does precisely this. It acknowledges the unique character of tax litigation by maintaining separate procedural provisions, but applies the same basic legal standards to tax as to other cases. That way, it simplifies our law and improves the ability of small businesses and other taxpayers to protect their rights.

I urge my colleagues to support this provision. And I urge the Senate's reconciliation conferees to insist that the provision be included in the conference report.

Mr. SASSER. Mr. President, the Consolidated Omnibus Budget Reconciliation Act of 1985 is the result of some of the most intense negotiations in which I have been a participant since becoming a Member of the Senate. In voting for its passage, I want to make special note of one of its provisions. It relates to the Urban Development Action Grant Program, a program with a proven track record and—with the passage of S. 1730—a promising future. A tremendous amount of time and effort has gone into assuring that future. I want to commend my colleagues' attention to the developments leading up to the inclusion of the UDAG Program in this bill.

When the UDAG Program was created, its mission was twofold: to provide a chance for distressed urban communities to stem the tide of decay, and to do it with a unique public-private partnership approach. UDAG's purpose was restated in legislation in 1981:

To assist cities and counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery.

A UDAG project was visualized as a sort of seed crystal around which other new development would grow. A UDAG project, with its combined commitments from the public and private sectors, would represent a renewed commitment to a city in economic trouble. The renewed commitment would come from its own citizens, its own businesses, its own State and local governments. The Federal role, the role of UDAG, would be to set the process in motion, to provide the kind of targeted structure that would insure success.

And UDAG has been successful. For the past several fiscal years, it was

funded at an annual level of $440 million. The program generated an average of 50,000 new permanent jobs for each annual appropriation of $440 million. At that level of funding, UDAG also created an average 100,000 construction jobs, stimulating $2 billion in private investment and $40 million in local tax revenue. UDAG projects leverage, on the average, nearly $6 of private capital for every UDAG dollar. It has made the make-or-break difference for cities and neighborhoods all across this country. It should be allowed to continue this vital function.

If the UDAG Program is so productive, then, what was the problem? The problem, frankly, was its own success. UDAG was making such an important contribution to these distressed cities and counties that soon the applications exceeded the program's ability to fund all the eligible projects.

And this is an important point, Mr. President. I said there were inadequate funds to grant awards to all the eligible projects. A city cannot even apply unless its economic profile indicates a significant degree of economic trouble. So not just any city can apply. There has to be a demonstrated need.

And not just any project is eligible for funding. Projects have to meet productivity standards. So UDAG is not just a pot of Federal money waiting for cities to ask for it. There are lengthy, rigorous requirements to be met before a UDAG project is fundable.

Having said that, I will repeat that the UDAG Program did not have sufficient funds for all eligible projects. That is a limited group, indeed.

HUD tried to allocate what funds were available in a way that was fair and that did not compromise the program's intent. They failed. In trying to target too heavily to some of the criteria of economic distress, they lost the partnership concept. There were a great many excellent projects that went unfunded, and a great many marginal projects that received grants. So much emphasis was put on certain aspects of a city's economic profile that the quality and productivity of the projects sank in importance. Less and less effort was required by the private sector. The importance of job creation was rapidly decreasing. Further deterioration of the productivity focus of the program threatened to reduce its overall effectiveness.

Those of us who wanted to restore UDAG's original mission, to rejuvenate its promise as a truly action-oriented program as its name implies, began the long process of negotiation. We wanted to preserve the careful targeting to distressed communities, while restoring the importance of each project's productive potential. Those whose main priority is targeting to communities with the most severe distress also recognized that a UDAG Program with a low efficiency rating would be vulnerable to a quick demise.

Thus, the long process of negotiation began. And we have been successful. The bill would devote one-third of available funds to a competition based solely on project factors. Applications in this so-called Project Pot would be ranked in order of the productive capacity of the project, how much private capital would be leveraged in relation to UDAG expenditures, how many jobs would be created or maintained, and so on. It is important to note again at this point that no city or country is eligible to apply unless threshold levels of economic distress have been met.

The remaining two-thirds of available funds would be allocated basically as they are now, with rankings ordered according to a blend of economic and project criteria. Minor changes have been made in the impaction and distress criteria in order to target the program more accurately toward distressed areas.

Mr. President, this is no hastily considered quick fix. The UDAG section of the bill marks the culmination of nearly 2 years of effort, the last several months of which have been devoted to a legislative compromise. The UDAG formula has been the subject of intense bipartisan negotiation and regional compromise. Those of us on the Banking Committee who support UDAG have found remedies for the problems that threatened its survival.

Senator RIEGLE, as ranking member of the subcommittee of jurisdiction, has devoted a great deal of time and energy to this effort. I, personally, appreciate the skill and dedication he has shown in finding a way to preserve the UDAG Program. He has done so in a manner that has won the support of a majority of the committee. Senators CRANSTON, SARBANES, D'AMATO, and HEINZ have also made major contributions to this process, making it possible to preserve the program by restoring its original mission.

Support for this approach extends beyond the Banking Committee as well. The proposed change to the UDAG formula in this amendment is the same as the change recommended in S. 1133. The bill was introduced on May 14 and has 17 cosponsors. I would urge my colleagues to note the geographical distribution of these cosponsors: D'AMATO, SASSER, GRASSLEY, HEINZ, DODD, THURMOND, DURENBERGER, HAWKINS, SPECTER, STENNIS, SARBANES, LEVIN, GORE, METZENBAUM, HARKIN, BOSCHWITZ, and CHILES.

You might almost say that the precedent for this agreement was the treaty at Appomattox.

And on this more recent occasion, we were joined by our brethren from the West. I want to say a word here about one of my colleagues from the other side of the aisle, from the other side of the country. Senator GRASSLEY has devoted a tremendous amount of his time and effort to bringing about needed changes in the UDAG formula. It has been a pleasure to work with the Senator from Iowa on this matter, and I want to express my appreciation and commendation to him for his contribution to the painstaking process of negotiating this compromise.

The compromise approach recommended in the bill has been endorsed by the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Association of Housing and Redevelopment Officials. As representatives of the communities served by UDAG, they have joined with us in seeking solutions to the problem at hand. Their support for the result is most welcome and appreciated.

Mr. President, I believe these changes will result in a revitalized UDAG Program, one that meets its goal of stemming the tide of decay that has plagued so many communities in this country, and that does so in a productive and effective way.

BLACK LUNG TRUST FUND

Mr. BYRD. Mr. President, I wish to express my opposition to the provisions included in this bill to terminate the borrowing authority of the Black Lung Trust Fund on September 30, 1986.

As was pointed out by Secretary of Labor Brock in his letter of September 19, 1985, to the chairman of the Senate Finance Committee, this provision would result in there being insufficient funds to pay benefits to persons legally entitled to them under the law, on the other hand, the Congress would respond to this prospective denial of benefits by appropriating funds from general revenues to cover the shortfall. In doing this, we are shifting the financial responsibility for the program from the coal industry to the general public. I am sure that this was not the intention of the committee in adopting this provision.

Let me also point out, that there is some misconception about this benefits program. Because of the growth in the number of claims and approvals funded under the Black Lung Benefits Act Amendments of 1978, the Congress adopted consensus legislation in 1981 which tightened eligibility criteria for all future claims and temporarily doubled the excise tax on coal. Those amendments resulted in the rate of claims being approved dropping from 40 percent under the 1978 amendments to just 3.3 percent in 1985. In other words, the Department of Labor projects that of the 10,659 claims that will be adjudicated by the end of 1985, only 355 claims will be approved. This certainly is not an indication of a program that is liberal with its benefit awards.

Coal tax revenues now equal roughly 85 percent of current outlays for income maintenance, medical, and administrative costs; however, the trust fund must continue to borrow from the U.S. Treasury to meet the shortfall in current obligations as well as to cover the cost of interest on past bor-

rowing. Those interest costs will reach over $270 million this year and are expected to exceed $300 million next year.

It is imperative to return the Black Lung Trust Fund to solvency but a repeal of the trust fund's borrowing authority does not meet this objective. I believe a compromise can be worked out between the coal industry, the coal miners, and the U.S. Department of Labor to achieve the long-term solvency of the fund. The joint BCOA-UMWA Industry Committee has been working on a compromise that will insure the solvency of the fund while insuring the health of the U.S. coal industry. This compromise would combine a 5-year moratorium of the interest payments on the trust fund's cumulative debt with a 10-percent increase in the black lung excise tax. These two steps would enable the trust fund to be solvent by 1997 and the debt to be retired by 2007. The Congressional Budget Office has scored the 5-year interest payment moratorium as having no budget impact and the 10-percent tax increase as increasing revenues and decreasing the deficit. Inasmuch as this will be at issue in conference, I would urge the distinguished chairman of the Finance Committee, Senator PACKWOOD, to pursue such a compromise.

Mr. PACKWOOD. I thank the distinguished minority leader. The House of Representatives included a 50-percent increase in the coal excise tax in its reconciliation bill, H.R. 3128. However, the Finance Committee did not include that provision. Many Finance Committee members believe that such an increase in the excise tax would harm the competitiveness of the domestic coal industry. Also, the Finance Committee agreed to terminate the unlimited authority for the black lung disability trust fund to borrow from general revenues, as of September 30, 1986, to encourage congressional review of the Black Lung Program.

Since the House bill and the Senate bill contain different provisions, I am sure that there will be further discussions of this issue during the conference.

BLACK LUNG TRUST FUND

Mr. WARNER. Mr. President, I rise to express my concern about the provision in the reconciliation bill which prohibits the Black Lung Trust Fund from further borrowing from general revenues after October 1, 1986.

Now is not the time for the Congress to haphazardly administer Band-aids to the Black Lung Program.

This could invoke a severe sentence on the coal industry—a sentence which could easily backfire and not produce the intended result of restoring financial solvency to the Black Lung Trust Fund.

The black lung disability trust fund was established by law in 1978 and is financed by a producers' tax on each ton of coal mined—50-cents-per-ton tax on underground production and a 25-cents-per-ton tax on surface-mined coal.

The Social Security Administration operates another version of the program which pays claims prior to 1973 from the general revenues, but this is not the issue before the Senate today.

The issue in question is the Department of Labor Black Lung Trust Fund which is now $2.5 billion in debt to the U.S. Treasury.

The trust fund can borrow from general revenues to make up any shortfalls between the coal tax revenue and benefit liability, but the advances are repayable at public debt rates.

Supplements to the coal tax have been necessary annually since 1978, and the fiscal year 1985 loan will exceed $360 million.

Clearly, action must be taken to restore the solvency of the Black Lung Trust Fund, but the solutions are not as self-evident as they might first appear.

Recently the House of Representatives and the U.S. Department of Labor put forth separate proposals to increase the excise tax on coal by 50 percent in order to improve the financial position of the Black Lung Trust Fund.

I am deeply concerned about the effect such proposals will have on the competitive status of America's coal industry and the possible self-defeating effect these proposals may have on the trust fund itself.

The more the tax is raised, the higher the cost of coal goes and the less competitive American coal is in the world market; consequently, less coal is produced and sold, further reducing revenues to the black lung disability trust fund.

In light of these possible consequences, I wrote to the General Accounting Office on September 12 requesting that they undertake an examination of the black lung trust fund and the implications of the various strategies for reducing the deficit.

I asked the GAO to include in the study the impact an increase in the coal excise tax would have on the coal industry.

When we go to conference with the House of Representatives on the budget reconciliation package, I strongly urge the Senate conferees to reject the House of Representatives' proposed 50-percent increase in the coal excise tax as a premature and hastily considered action.

Mindful of the pressing situation, a committee of coal operators and the United Mine Workers, collectively known as the joint interest committee, has developed an alternative to eventually eliminate the black lung trust fund deficit.

Their approach is to accept a 10-percent tax increase coupled with a 5-year freeze on interest payments on the black lung trust fund deficit.

I commend the leadership of the United Mine Workers and the coal industry for their excellent cooperation on this difficult issue and urge the conferees to study it very closely as an alternative to the position of the House of Representatives.

Fortunately, the Nation's coal mines are cleaner and safer today then when many of the current black lung beneficiaries were mining coal.

Hopefully, this will result in fewer miners in the future contracting the tragic disease of pneumoconiosis.

This does not, however, lessen our responsibility to those who are now suffering and either receiving black lung benefits or awaiting a determination of eligibility.

I call on all of my colleagues for their support in this important effort.

Eliminating general revenue borrowing authority for the black lung trust fund can only add to an already difficult and problematic situation.

I look forward to continuing to work with all interested parties on a reasoned and effective approach toward resolving the black lung trust fund deficit.

Mr. ROCKEFELLER. Mr. President, I am very pleased to join my fellow colleague of the State of West Virginia, the distinguished minority leader, and other concerned Members of the Senate in discussing an important issue addressed in the Senate's reconciliation legislation. For the past several months, I have been involved in this matter, which is enormously important to my State of West Virginia and many other States. Namely, I have tried to assist in developing a consensus on how to bring the Black Lung Trust Fund into fiscal solvency.

I am joining other concerned Senators in addressing this issue today. Some of them have explained the course of events leading up to this discussion. This is the present situation: There are two distinct proposals in the House and Senate versions of reconciliation legislation that address the Black Lung Trust Fund deficit problem. In late July, the House Ways and Means Committee adopted, by a very close vote of 17-16, a provision to impose a 50-percent increase on the excise tax on coal to raise revenue to pay off the debt of the fund. In mid-September, the Senate Finance Committee adopted, by voice vote, a measure to preclude the fund from any further borrowing authority is not necessary to addressing the fund's deficit and poses grave dangers to the future of the Black Lung Program and its deserving beneficiaries.

It will be up to the House-Senate conferees to resolve this major difference, and develop an alternative to addressing the fund's indebtedness. I am quite hopeful that a responsible plan will emerge in conference, based on my discussions of this issue with members of the Finance Committee, the administration, and other Senators concerned about the Black Lung Program.

I wish to emphasize the spirit of cooperation that has evolved in the process of trying to deal with the Black Lung Trust Fund problem. Secretary of Labor William Brock has consistently communicated his willingness to consider alternatives to the administration's original proposal that included the 50-percent coal excise tax increase adopted by the House Ways and Means Commitee. In a recent letter to me, dated October 15, Secretary Brock affirmed that he remains "open to the exploration of alternative approaches which would meet our basic objectives."

Mr. President, I have attached Secretary Brock's correspondence to me and ask that it be submitted along with my statement in the RECORD.

Of great importance is the joint efforts of the coal industry and organized labor. An ad hoc subcommittee was formed by the United Mine Workers of America and the Bituminous Coal Operators Association to address this matter. Members of Congress will certainly recognize the significance of this team work. It is in the national interest to encourage such cooperation and try to solve the pressing problem of the Black Lung Trust Fund in a way that will not do any further harm to the coal industry and its workers. In August, this Joint Interests Committee released a published discussion of althernatives to the 50-percent tax increase which included a favorable view of a 10-percent tax increase.

Finally, certain members of the Finance Committee have shown a consistent willingness to reconsider the provision and to work with the other concerned parties in fashioning an alternative that would be acceptable to the legislation's conferees. I have discussed this in some detail with certain senior members of the Finance Committee, and feel a great deal of gratitude toward them for their consideration and attention.

There are responsible options to the respective House and Senate committees' versions. The issues involved with the fund's insolvency are complicated, and it has taken some time to analyze the reasons for the debt, prove into the assumptions underlying different projections about the future size of the debt, and develop workable approaches for restoring the fund's solvency. But I sincerely believe we are at the point where the conferees on reconciliation legislation can consider sound, workable proposals for addressing the Black Lung Trust Fund's fiscal state.

Mr. President, I encourage the distinguished leadership of the Finance Committee to draw on the resources available among all of the parties concerned about the Black Lung Program, and determine an acceptable, responsible legislative solution to this problem. The proposal submitted by the Joint Interests Committee representing coal companies and organized labor would serve as an excellent starting-point for the conferees on reconciliation legislation.

I will continue to press for an approach that ensures the financial integrity of the Black Lung Program. I also will do everything I can to make sure that the Congress does not respond to the financing issue at the expense of the program's current and future beneficiaries. We have a great responsibility to carry out the mission of the Black Lung Program and provide the compensation owed to those miners who suffer severe harm from the crippling disease of pneumoconiosis.

I look forward to working with all of my colleagues in solving this matter and returning stability to the Black Lung Program.

The letter follows:

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, October 15, 1985.

Hon. JOHN D. ROCKEFELLER IV,
U.S. Senate, Washington, DC.

DEAR JAY: Thank you for your letter of September 24 concerning the Finance Committee's action on Black Lung Disability Trust Fund financing. I appreciate your support for the Administration's position that a responsible solution must be found to bring the Trust Fund's steadily growing indebtedness to the Treasury under control and arrange for its repayment.

Although I believe that the excise tax increase approved by the Ways and Means Committee would provide an effective solution to the problem, we remain open to the exploration of alternative approaches which would meet our basic objectives. To that end, Department of Labor staff are working with Congressional staff, including Ms. Tamera Stanton of your office, to explore other solutions that may be available to us.

I look forward to your continued support and cooperation in our joint effort.

Very truly yours,

WILLIAM E. BROCK.

Mr. HEINZ. Mr. President, I rise to join my distinguished colleagues from West Virginia, in opposition to the provision in the Finance Committee reconciliation package which would terminate the borrowing authority of the Black Lung Trust Fund on September 30, 1986.

The Black Lung Program was first established as part of the Mine and Safety and Health Act of 1969. The program was subsequently amended several times, most dramatically in 1978. Under the 1978 amendments, eligibility criteria were broadly expanded, and a coal tax was established to pay for those benefits. Pursuant to the 1978 amendments, the number of beneficiaries in the Labor Department's program grew from 6,000 in 1977 to over 80,000 in 1980. As a result of the 1978 changes the fund developed a $1.5 billion deficit. In 1981, the Congress enacted consensus legislation to tighten eligibility requirements and temporarily doubled the tax rate.

In 1981 Congress also doubled the coal excise tax. At that time it was projected that the trust fund would be solvent by 1995 or sooner. Now the Department of Labor tells us that their projections in 1981 were wrong, and that over the past 4 years, rather than decreasing, the debt to Treasury has grown to $2.5 billion.

Coal excise tax revenues now equal roughly 85 percent of current outlays for income maintenance, medical and administrative costs. The trust fund must borrow from the U.S. Treasury each year to meet the shortfall in the current obligations. The majority of the money borrowed from Treasury is then paid back to Treasury to cover the cost of this borrowing, borrowing which was the result of the 1978 changes.

The Ways and Means Committee has proposed increasing the coal excise tax by 50 percent, as a means to making the trust fund solvent. The Finance Committee has been opposed to this increase. At a time of falling energy prices, an increase of 50 percent in the black lung tax would significantly and seriously impact an already depressed domestic coal and mining industry, and further erode its ability to compete in world markets.

Since 1977 the number of operating coal mines in the United States has declined from more than 7,000 to approximately 3,000. The additional tax increase proposed by the Ways and Means Committee, would exacerbate this alarming trend. A significant increase in the black lung excise tax would contribute to the loss of both domestic and international markets for coal industry. While we on the Finance Committee recognized the impact a large coal excise tax increase would have on the coal industry, we opposed the tax and will continue to oppose coal excise tax increase.

The Finance Committee however accepted an amendment which would terminate the borrowing authority of the Black Lung Trust Fund on September 30, 1986. This was done with very little debate, and I think without a full understanding of the consequences. This amendment could result in there being insufficient funds to pay benefits to persons legally entitled to them under the law. It could also result in Congress using general revenues to cover the shortfall. This is not the result that the committee intended.

The Black Lung Trust Program has been examined closely, and Congress tightened the eligibility requirements. The program does not need to be reexamined. We did that in 1981. What we need now is responsible legislation to address the long-term solvency of the fund.

The approaches taken by both the Ways and Means Committee and the Finance Committee would not meet this objective. However, I believe that it is possible for the conferees to find a compromise that will result in the solvency of the Black Lung Trust Fund, and I will work with the conferees to achieve an equitable result.

Mr. DIXON. I rise to express my concerns regarding a provision which is included in this bill to terminate the borrowing authority of the Black Lung Trust Fund on September 30, 1986.

This proposal does not please anyone—not the coal industry, not the coal miners, and not the Department of Labor. We need to find a better way.

The trust fund is insolvent. No one argues that point. However, by terminating borrowing authority without any other provision, the program would have to be cut back considerably. Benefits would have to be reduced by half to over 80,000 current beneficiaries. That, Mr. President, is unacceptable.

The House has a proposal to increase taxes on the industry by 50 percent. This would place a tremendous burden on an industry which still suffers 30-percent unemployment.

At the time of both the House and Senate committee markups, the industry had not put forth a proposal. There is one now, and it should be given careful consideration by the conferees.

The Joint Industry Committee—composed of representatives of the major coal industry companies and the United Mine Workers of America—has proposed a tax increase of 10 percent accompanied by a 5-year moratorium on interest payments and interest accrual. This would make the entire Black Lung Trust Fund solvent by 2007, and CBO reports there would be no budgetary impact for the moratorium.

This is an industry which has already made substantial changes in its eligibility requirements since 1981. Most of the insolvency stems from the system as it existed prior to that time. The system will eventually have fewer beneficiaries from an actuarial standpoint, because the population is aging and many improvements have been made in underground mining which prevent the disease from occuring.

In its most recent contract, the United Mine Workers and the industry achieved agreement without strikes. They worked together to protect workers and give the beleaguered coal industry a chance to become competitive.

It is imperative that we maintain this program for people who suffer this terrible disease. It is likely that a compromise can be reached, if the conferees can remain open to other options which are available, to develop a satisfactory solution to this shortfall.

I urge the members of the Senate Finance Committee to maintain an open mind to the Joint Industry Committee's proposal. It is a positive alternative to the House tax increase which would have a very damaging effect on the industry and the Senate cutoff of borrowing authority which would hurt the thousands of workers who suffer from this debilitating disease.

UDAG PROVISION

Mr. RIEGLE. Mr. President, upon final passage of the Reconciliation Act, I wish to take a few moments to call to the attention of my colleagues some very important changes to the UDAG program contained in this bill.

Title III of the Reconciliation Act will greatly improve HUD's Urban Development Action Grant Program [UDAG] by reforming the project selection system to give cities in all areas of the country a fair chance to receive funding for sound projects.

That UDAG provision is very important because the current project selection system freezes out many cities needing UDAG help in creating a private-public partnership to strengthen their distressed economies.

This provision is virtually identical to S. 1133, a bipartisan bill that I and other Senators from all regions of the country developed after many months of consultation with private sector experts and local officials across the country.

First, the provision would improve upon the current measures or project quality by giving added recognition to a project's ability to bring new capital into a local economy, to help a city's most distressed neighborhoods, and to relieve a city's most pressing residential or employment needs. Extra weight would be given to projects from cities that have not received a UDAG grant in recent months.

Second, the provision would give these improved project measures more weight:

Two-thirds of the funds would be awarded according to impaction, distress, and project measures. Within this pot, pre-1940 housing would get less weight than currently and project measures would get more—both changes would help cities that have recently been at a disadvantage in the competition.

One-third of the funds would be awarded according to project measures alone.

Third, the provision would extend the authorization for UDAG for 1 year, through fiscal year 1987, at the reduced levels called for in the budget resolution. This modest extension must be made now if all cities are to have time to develop sound projects and take advantage of the new selection system.

Fourth, the provision would permit cities to use repayments from UDAG projects so long as the use is consistent with the purposes of the Community Development Act.

Finally, the provision requires HUD to study the UDAG eligibility and selection standards and to give Congress recommendations for improvement.

This provision is strongly supported by the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the National Association of Housing and Redevelopment Officials, and other organizations interested in economic development.

The UDAG program has proven that the Federal and local governments can act in cooperation with the private sector to strengthen the economies of our Nation's most distressed cities.

UDAG is clearly a program that is working extremely well. It helps locate new industry in areas where there is the greatest need. It creates jobs. It makes fuller use of the Nation's enormous investment in existing roads, water, and sewer systems and other infrastructure.

Since it was enacted, UDAG has demonstrated solid results. Nearly 2,600 UDAG projects are projected to create or maintain 590,000 permanent new jobs—58 percent of those jobs are slated for low- and moderate-income persons.

UDAG has stimulated $6 in private investment for every Federal dollar. That's a total of $23 billion private investment that UDAG has generated in just a few years. That's a real success story in private sector-Government cooperation.

UDAG projects are expected to contribute $513 million in annual tax revenues to hard-pressed local governments. At the end of 1984, local governments were already receiving $69 million annually in additional revenues as a result of UDAG projects. Repayments of loans made with UDAG funds have provided an additional $75 million.

At the end of last year, UDAG projects would produce over 100,000 housing units, approximately one-third of which are for low- and moderate-income persons.

The UDAG program generates more fiscal benefits in the form of increased revenues and reduced transfer payments than it costs. Conservative estimates place the increased Federal, State, and local revenues and cost savings at $991 million per year, compared to an annual appropriation of $440 million. Clearly, UDAG has helped to build a solid new economic foundation in a number of hard-pressed cities across the Nation. And it has done so while maximizing the return on scarce Federal dollars. Such a successful Federal program should be continued.

In my own State of Michigan, the UDAG program has allowed communities to help themselves in partnership with the private sector and with a minimum of Federal direction, red tape, and bureaucracy. Since 1978, over 50 Michigan communities have received nearly $337 million from the Federal Government and over $3 billion from private investors for UDAG projects; 68,000 Michigan jobs have been created or saved.

I strongly support UDAG as an important and proven tool that enables private investors and local governments to carry out projects that help

develop the economies of the Nation's most distressed cities.

Mr. GORTON. Mr. President, I would like to take this opportunity to reiterate my deep belief that reducing the deficit is of vital importance not only to the future well-being of our Nation, but to the maintenance of a healthy and thriving American economy.

The past several months have been occupied with battles over spending excesses—each appropriations bill has been the occasion of lengthy debates about budget cuts. Mr. President, there can be no question that before us is the most important task of our time—to return to sound fiscal policy that provides a fertile climate for economic stability and growth.

It is no secret that I was deeply disappointed with the results of the budget debates of last summer. As a member of the conference committee that was to resolve the budget disputes between the Senate and the House, I stood behind the strong positions adopted by the distinguished chairman of the Budget Committee, Senator DOMENICI. I joined with the distinguished Senator from Florida and four other Senators in offering a budget proposal that would have cut $70 billion from the fiscal 1986 budget through a combination of spending cuts and new revenues. We were abandoned at that critical time by our administration and the leadership in the House of Representatives, and I wholeheartedly believe that, as a result, we were left with too little on the table from which to achieve our goal given the overwhelming magnitude of this task. Despite the dedicated and fruitful efforts of the distinguished Senator from New Mexico, whose leadership led us much further toward our goals than we might otherwise have come, we were hamstrung by the infamous oak tree agreement, which left us with too little to bargain over.

In the months since Congress adopted the mediocre budget resolution for 1986—which was truly about the best we could do without the cooperation of the administration and the House—the economy has slowed. Deficits are still projected to remain high. Interest rates have not declined significantly. The dollar has not weakened enough to turn the tide of our tremendous trade deficit. In these months we have seen a concomitant rise in concern over the health of our economy, ravaged by these symptoms of unbridled Federal spending. We have responded with protectionist legislation and we have seen the G-5 try to scare the dollar down. We are reacting to the symptoms of recurrent, high Federal deficits with legislation we would not need if we could adopt a sensible and effective budget resolution that would do the job that needs to be done.

We have seen the spectre of overhauling our budget process rise before us. I cosponsored and continue to support the proposal, offered by the distinguished Senators from Texas, New Hampshire, and South Carolina, but it may founder on the very rocks on which our best budget proposals fell apart this summer—the lack of commitment and tenacity, and the simple inability to make the tough decisions all of our constituents demand of us.

Mr. President, we must have the courage and the discipline to make the solid spending cuts that are required of us in this bill and the appropriations bills that still lie ahead. I urge my colleagues to reflect on the urgency of this task. There has been enough talk and posturing. It is time to get the job done.

AGRICULTURAL CREDIT PROVISIONS

Mr. BUMPERS. Mr. President, today I am voting for final passage of S. 1730, the Consolidated Omnibus Budget Reconciliation Act of 1985. I am dong so because perhaps nothing concerns me as greatly as the astronomical deficits that threaten the well-being of our economy for generations to come. This bill, containing hundreds of different budget saving provisions, purports to reduce the deficit by over $85 billion for fiscal year 1986 through 1988. I certainly hope that optimistic result may be achieved; we have no choice but to pass this bill. However, I have grave misgivings about certain elements of this bill and I want to register those concerns at this time.

There are provisions contained within the agricultural eredit sections of this bill that I believe, if enacted, would devastate our rural economy. First, I am vigorously opposed to the trend of shifting emphasis from insured loans to guaranteed loans in both the farm ownership and operating loan programs. It is especially troubling to me in the area of farm ownership insured loans, because I see ever-growing, critical needs there. That shift in emphasis to guaranteed loans will cause many thousands of farmers to face severe problems for which they may have no recourse. Insured loans are essential for farmers, and are primarily being used to refinance land debt instead of to acquire new land. Operating loans cannot be used for this purpose.

In my State alone in fiscal year 1985, there were, and continue to be, many hardship cases—farmers who have already qualified to receive direct loan assistance—but because funds for that program had long been depleted, loan money could not be provided. Under those bleak circumstances, they stand to lose everything they have ever worked for. There simply are no other lenders willing to refinance this debt. Banks are under increasing Federal pressure to liquidate their farm loans in order to minimize their risks and to reduce their agriculture loan portfolios. Unfortunately, the Farmers Home Administration remains a "lender of last resort," and for participating farmers, these loans are, indeed, their last resort. Farmers Home Administration makes loans to applicants who can find no other source of financing on terms they can meet or afford. In recent years, thousands of farm families have been able to keep their land, rather than abandon farming, because the direct loan program enabled them to manage their debts through critical periods. With the reduced emphasis on insured loans and increased emphasis on the guaranteed program, this optimistic outcome will surely become less and less possible.

When the Appropriations Committee marked up the fiscal year 1986 Agriculture appropriations bill, I tried to protect the farm ownership insured loan program, because I know of its critical importance to thousands of rural Americans. Unfortunately, my amendment to increase that funding was not accepted. I want to emphasize, again, my great desire to do everything possible to come to terms with our deficit. However, I believe it would be totally irresponsible to turn our backs on the struggling rural economy during this critical period. I do not believe the shift in emphasis to guaranteed loans over insured loans is based on sound economic principle or humanitarian interests, and I remain adamantly opposed to this change.

Mr. President, another provision in the agricultural credit section of S. 1730 with which I disagree is the $75 million authorization limit on the Farmers Home Administration water and sewer facility loans program for fiscal year 1986. This new limitation is a drastic reduction from the fiscal year 1985 funding level of $340 million. During the Appropriation Committee's markup of the Agriculture appropriations bill, my amendment to provide level funding for this vital program for fiscal year 1986 was accepted. I was extremely pleased that the members of the committee agreed on the critical need to maintain the water and sewer facilities loans without "busting the budget." I also spoke about this during the Senate's floor debate on the bill, when an effort was made to gut the program. Fortunately, I was able to convince my colleagues of the importance of a sound water and sewer loan program, and that effort to destroy it failed. I want to again mention a few very relevant points which illustrate just how important this program is for rural communities.

As in many other programs, the Farmers Home Administration is frequently the only available source of assistance for rural communities with water and sewer needs. And those needs are significant throughout America. Ground water contamination is threatening water supplies in my State and in many other parts of the Nation. Local officials everywhere are working against tight deadlines to bring their waste disposal systems into

compliance with strict Federal standards, and this effort carries a tremendous price which is difficult at best, and often impossible, for a poor rural community to bear. Many loan applicants need substantial assistance to eradicate documentable health hazards. Communities must have 20,000 persons or less to qualify, and must not be located near a major metropolitan area.

Grant money, another critically important source of assistance, can only fund 75 percent of a project, so adequate loan money is absolutely essential. To have qualified for those grants in Arkansas, an area's median income must be a mere $10,650 or less, or poverty level. In such communities, it is highly unlikely that enough State and local funds exist to replace these drastic cuts in Federal funds. In Arkansas, the State soil and water conservation agency is the only State-funded agency that provides funding for rural water and waste projects. That agency has only $2 million available for the coming fiscal year. Available State money must be shared with urban areas, as well. Even with the limited assistance that now exists, rural water bills run a minimum of $18 to $20 per month per customer. Given the poor state of the rural economy, this is a significant cost, and any increase will pose a real burden.

In Arkansas, 530 rural communities and water associations received water and sewer facility loans since 1963, and at least 50 percent of those qualified for grants, as well. Farmers Home Administration officials in Arkansas have told me that last year, our State used $14,470,800 in water and waste loans. There are currently between 140 and 150 preapplications on hand, as yet unfilled, and those that qualify will require at least $75 million, and possibly as much as $100 million. That required amount for one small State equals or surpasses the total amount of this bill's proposed authorization level.

Mr. President, I believe it would be irresponsible to destroy this program in the face of such dire need. Maintaining an even level of funding authority represents a sound investment in rural America's future, and I vigorously oppose anything less.

Mr. HATFIELD. Mr. President, as we find ourselves in the inexcusable position of having spent weeks on this reconciliation bill I think it appropriate again to state my opposition to this procedure.

Reconciliation is simply a legislative straightjacket which is ineffective and which results in significantly diminishing the responsibility of each authorizing committee. By instructing each committee to achieve certain savings over a 3-year period, the Budget Committee has transfered from each authorizing committee needed flexibility in setting budget priorities and has further removed those committees from playing their rightful part in the budget process as contemplated by the Budget Act. Continued use of the reconciliation process only results in diminishing the accountability each committee has for establishing spending targets for their programs which are within the limits established by the budget resolution.

In this current congressional climate of "quick fix" solutions to our fiscal crisis, let no one be lulled into believing that the reconciliation process is an effective method of eliminating our Federal debt. While I support efforts to reduce our Federal deficit, I do not support achieving that reduction in this manner.

IN SUPPORT OF THE PROVISION ON AWARDING COURT COSTS

Mr. DOMENICI. Mr. President, I know that I do not have to inform any of my colleagues of the blunders, delays, and errors which have plagued the Internal Revenue Service this year because of computer problems. I have been fortunate in that I have been able to help many New Mexicans work with the IRS to resolve the mistakes, but many problems remain. Just a couple of weeks ago, I was contacted by a constituent who was told by the IRS that he still owed over $4,000 in taxes, although he had paid his taxes in full last April. This gentleman tried to iron out the problem with the IRS, but the IRS would tell him one month that the problem was solved and then turn around and tell him that he still owed his taxes the next month. Fortunately, we were able to get to the root of the problem and set the IRS straight. It is difficult, however, for most people to get these problems solved.

So it should come as no surprise when I say that the IRS can and does make mistakes. Of course, everyone makes mistakes, but when the IRS makes a mistake, innocent individuals find themselves forced into Tax Court. These people have done nothing wrong, but find themselves having to go to court to defend themselves. And to make matters worse, it used to be that each party engaged in tax litigation involving the Government was largely responsible for the payment of his or her own attorney's fees and other expenses incurred during litigation, even if he or she won in court. For many citizens, the costs of challenging an IRS action prevented them from fighting the IRS, especially when the cost of contesting the IRS action exceeded the amount at stake. In such cases, many individuals perceived that it was more practical to just let the IRS win than to fight back.

That was before the Tax Equity and Fiscal Responsibility Act of 1982. Under that law, a taxpayer who prevails against the Federal Government in a civil tax action in the U.S. Tax Court, the U.S. Claims Court, or any other Federal court and who demonstrates that the position of the Government in the case was unreasonable may be awarded reasonable litigation costs, including attorney's fees, at the discretion of the court. Any awarded is limited to $25,000.

Many taxpayers who have been treated unfairly by the IRS have been able to achieve justice because of this law. Yet, this law is scheduled to expire at the end of this year. The bill now before us contains a provision which would modify and extend this law. I rise to express my support for that provision.

The bill now before us would make the provision regarding the reimbursement of litigation costs in tax cases a permanent part of our laws. It would also eliminate the $25,000 cap on awards and would restrict the amounts which could go to attorneys to $75 an hour except in special cases. It also would prohibit an award to any individual who unreasonably prolonged the proceedings. Finally, the bill would substitute the "no substantial justification" standard for the "unreasonable" standard. The "no substantial justification" standard requires the Federal Government to show that its position was substantially justified or that special circumstances exist which make the award of litigation costs unjust in order for the Government to avoid having to pay for a prevailing taxpayer's litigation expenses.

These changes will provide more citizens with greater protection from unwarranted actions by the IRS. The purpose of this legislation is to reimburse individual taxpayers who successfully litigate against the Federal bureaucracy regarding tax matters. It seeks to ensure that taxapyers will not be deterred from seeking review of, or defending against, unjustified governmental action because of the expense involved in securing the vindication of their rights. It will force the IRS to be responsible for its conduct and will provide those with modest means with access to the courthouse door.

I do not mind telling you that I feel a sense of achievement as we are about to adopt this measure. The provision before us is an extension of the Equal Access to Justice Act, which I frest introduced in the 95th Congress. The Equal Access to Justice Act was subsequently adopted on a trial basis and, because of its undisputed success, we made it a permanent part of our laws this past summer. I have felt for years that the tax cases should be covered by the Equal Access to Justice Act and have fought to include the IRS under the act. The provison in the bill before us would extend the concepts of the Equal Access to Justice Act to tax litigation on a permanent basis and bring the provisions governing awards of court costs and fees in tax cases into conformity with language of the Equal Access to Justice Act. I am glad we are finally going to do this. It is long overdue.

Mr. President, by requiring tax litigants who prevail to be reimbursed for their fees, this provision will prevent

spurious suits and will insure the contesting of meritorious disputes with a fair presentation of the issues. They say that "the IRS always wins," and the prevailing attitude of many today is that even if you do fight the IRS and win in court, you still lose because of the cost. We must eliminate the possibility of such Pyrric victories. The average American must be made to feel that he or she can question the exercise of the Government's discretionary power as to its reasonableness without incurring large costs if he or she prevails. We are fortunate to live in a society where one has the right to challenge the actions of one's government, but the protection afforded by that right is diluted when the average citizen is deterred from exercising that right because of the fear of incurring a substantial financial loss in the process. The provision before us goes a long way toward ensuring that such a situation will not occur.

HEALTH INSURANCE CONTINUITY

Mr. DURENBERGER. Mr. President, today as the Senate completed work on S. 1730, reconciliation of the budget for fiscal year 1986, I would like to call my colleague's attention to a provision included in the Finance Committee's package which requires health insurance continuity for divorced spouses, widows, and widowers and their families.

The Finance Committee amendment began as a portion of S. 1169, the 1985 Economic Equity Act, which I introduced earlier this year. The measure requires employers who have over 25 employees and provide health benefit plans to continue coverage for spouses and families for up to 18 months after a loss of coverage due to a change in marital status, termination of employment, or in the event of death.

Economic equity for women in our society is closely linked to the ability of women to continue supporting themselves following the death of a spouse or divorce. The new poor in our society include women and children who at one time benefited from spousal salaries and fringe benefits and who, due to varying circumstances, no longer have access to them. Health insurance continuity, at no cost to the Federal Government, assists former spouses, for the most part women, in becoming self-sufficient, rather than reliant on limited public resources. The 18-month continuity requirement allows a former spouse time to find employment, thereby gaining access to another group health plan, or to shop for the best private health plan.

Continuity is both a women's issue and a health care access issue. Health insurance continuity is vital for the spouses and families left behind by the death of a covered employee or a divorce and for spouses and families following a termination of employment. Eighty-five percent of all current health insurance is offered under group plans, generally through employment. Group health plans are able to provide the best coverage for workers and their families, at the lowest cost. However, following a divorce or death, or the termination of employment, the worker's spouse health insurance continuity offers a cushion between group health plans or for the transition from group to nongroup insurance.

ACCESS TO HEALTH INSURANCE

Currently 6 million widows and divorced women are unable to obtain any health insurance. Many of those uninsured women held coverage with a spouse at one time, and following a divorce, death or termination of employment were faced with a handful of undesirable choices. Some former spouses were able to convert their current health coverage to a private plan which often did not offer the same coverage dollar per dollar as the group plan. In addition, often these new nongroup plans did not cover prior existing conditions. Many women went completely without basic insurance.

HEALTH INSURANCE CONTINUITY

The Finance Committee provision included in the reconciliation package achieves a valuable result through a simple 18-month extension of current coverage policies. An 18-month continuity period, during which the spouse pays the full premium plus no more than 2 percent of the total cost to cover administrative expenses, offers former spouses and their dependent children the opportunity to shop for the best health plan for their money or enroll in a new health plan through employment. Eighteen months is a modest buffer zone which will assist spouses of covered employees to adjust financially to the new economic or marital situation.

Health insurance continuity makes good policy sense on many fronts; it offers an opportunity for coverage to many who might otherwise turn to public assistance, and serves to slow the downward spiral of the feminization of poverty. This provision does not mandate benefits, rather it mandates the opportunity to maintain access to affordable group health insurance.

ERISA

Mr. BYRD. Mr. President, I am concerned that the effective date language in the ERISA amendments is ambiguous. I would appreciate a clarification as to the intention of the authors of these amendments.

Mr. METZENBAUM. Mr. President, I would be happy to respond to my good friend the Democratic leader.

The Democratic leader is absolutely right. The effective date provisions require clarification, and I can assure him that in conference we will clarify them. As a coauthor of these amendments, it is my intention that pension plan sponsors who file a notice of intent to terminate their pension plans prior to enactment will not be required to refile with the Pension Benefit Guarantee Corporation. However, with respect to the substantive protections contained in the ERISA amendments the conferees may very well require pending terminations to satisfy some or all of these changes. But I can assure the Democratic leader that except where the bill already expressly states otherwise, it is not the intention of the authors of these amendments to impose the notice and other procedural requirements retroactively to plans that are already pending before the PBGC.

Mr. GRASSLEY. I would like to address some questions about PBGC guaranteed benefits to my friend from Ohio, a coauthor of the ERISA provisions of this bill. Does this bill change what benefits will be guaranteed upon plan termination?

Mr. METZENBAUM. No, it does not.

Mr. GRASSLEY. Does this measure impact the payment by the PBGC of plant shut-down benefits?

Mr. METZENBAUM. As under current law, if a participant was entitled to a plant shut-down benefit as of the date of plan termination, it is generally guaranteed by the PBGC.

Mr. GRASSLEY. That is my understanding. However, I am aware of at least one case in which the PBGC disregarded the specific provisions of a plan providing for the payment of plant shutdown benefits. I want to be sure it is understood that plant shutdown benefits in this case, and in other such cases, are guaranteed.

In the case of Dubuque Packing, a meatpacking company in Iowa, the PBGC took an unduly narrow reading of the plan document and refused payment of plant shutdown benefits. Prior to the date of plan termination, Dubuque Packing closed a plant. The plan administrator of the Dubuque Packing pension plan approved the payment of plant shutdown benefits to those participants entitled to the benefits, in accordance with the plan document. Dubuque Packing sold the plant to an entirely new company and that company subsequently reopened the plant. A number of former employees were later reemployed at the reopened facility but at far lower wages than they were previously paid. Not only were these critically needed plant shutdown benefits suspended, but the PBGC took the position that benefits paid to rehired employees, pursuant to the plan administrator's determination that they were entitled to the plant shutdown benefit, were subject to recoupment. Consequently, as a result of the PBGC's failure to follow the express terms of the plan document, these employees will receive a far lower benefit than they are entitled to.

I thought it was clear that under ERISA plan administrators and the PBGC must interpret the plan document consistent with the language of the plan, the intent of the drafters of the plan and past practice.

Mr. METZENBAUM. Under current law benefits are guaranteed in such situations. It would be inconsistent with the purpose of the insurance system to interpret plan provisions calling for benefits to be paid upon the shutdown or closing of a plant or facility in any other way. Such plan provisions are typically designed to provide benefits to participants upon the cessation of business operations at a plant by the plan sponsor. If a plan contains a plant shutdown benefit, obviously the benefit must be paid in the event there is a plant shutdown.

Of course, a plant shutdown occurs when there is any cessation of operations by an employer at the facility. In the case of an employer that reopens a closed facility, the continued payment of plant shutdown benefits will depend on the facts and circumstances of each case, including the plan provisions. However, if a plant is reopened by a new entity, then benefits pursuant to a plant shutdown provision must continue to be paid, since in such situations the plant will be operated by an employer other than the one that maintained the terminated plan. This is similar to the administration of a suspension of benefits clause. Benefits may only be suspended under ERISA in the case of a single employer plan if an employee resumes work with the employer that maintained the plan under which the benefits were being paid.

Thus, in the situation you described, and in all other such cases like it, the plant shutdown benefit is payable and must be guaranteed by the PBGC.

Mr. GRASSLEY. I agree. Under such an interpretation the plant shutdown benefit in the Dubuque Packing pension benefit must be paid.

Mr. METZENBAUM. That is correct. In fact, this matter was addressed when the House of Representatives Committee on Education and Labor met to consider amendments to the single employer termination insurance program. The committee reports that accompanied H.R. 2811 and 3128, and colloquies between Congressmen CLAY and TAUKE on September 11 and 19, 1985 make clear that the PBGC is required to guarantee the payment of plant closing benefits in the Dubuque Packing situation and others like it.

Mr. GRASSLEY. Thank you for clarifying this important matter. I would also like clarification on whether optional forms of benefits under the terms of a terminated plan are payable. Is it not true that upon termination of a plan optional forms of benefits provided for under the terms of a plan, with the exception of lumpsum payments of benefits, must be made available to participants or beneficiaries who meet the requirements to elect such form of benefit?

Mr. METZENBAUM. That is correct. The PBGC must apply the terms of the plan.

Mr. GRASSLEY. Unfortunately, it is my understanding that the PBGC does not pay benefits in accordance with the benefit options available under the terms of a plan. That is, the PBGC will only provide the normal form of benefit provided by a plan. For example, if the normal form of benefit is a joint and survivor annuity for a married participant, that will be the only form of benefit payment by the PBGC. As I understand it, the PBGC will not honor an election by a participant and spouse waiving the joint and survivor annuity in favor of another form of benefit such as a single life annuity, even though the plan specifically permits such an election. I am aware of a specific case involving another meatpacking plan in Iowa, the Rath Packing Corp. pension plan, where the PBGC would not allow participants to elect other forms of benefits offered under the plan.

Mr. METZENBAUM. Such actions would be inconsistent with current law and the intent of this bill. The PBGC or plan administrator must make available to plan participants all optional forms of benefits, except lump sum cash-out of benefits, under the terms of the plan documents as of the date of termination. This is true even though the date at which the participant is eligible to elect the optional form may occur after the date of termination. Thus, those participants who reach retirement age after the date of termination may elect those forms of benefits provided under the plan that are consistent with ERISA.

Mr. GRASSLEY. So an election under the terms of a plan after the date of termination by a participant or beneficiary must be given effect?

Mr. METZENBAUM. Yes, whether or not the plan termination took place before or after enactment of this bill.

Mr. GRASSLEY. If, as of the date of termination, a plan had not yet been amended to comply with applicable law, must the PBGC or the plan administrator administer the plan as if such amendments had been adopted before the date of termination? For instance, if the plan had not yet been amended as of the date of termination to comply with the Retirement Equity Act of 1984, would not the PBGC or plan administrator be required to provide the preretirement death benefit mandated by that act?

Mr. METZENBAUM. Yes. For example, if a participant has satisfied the conditions for a nonforfeitable benefit as of the date of termination, but dies after the date of termination, the death benefits now mandated by ERISA would be payable by a plan or the PBGC to the participant's spouse unless it had been waived.

Mr. GRASSLEY. I thank the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to support that portion of the reconciliation bill entitled the "Single-Employer Pension Plan Amendments of 1985."

The single-employer pension plan amendments substantially change the procedures for terminating single-employer pension plans. But more importantly, they include substantive changes in law that will protect the retirement security of American workers and retirees when pension plans are terminated.

The basic principle of our pension law, ERISA, is that employers should live up to their pension promises. But unfortunately, there are many instances in which companies can terminate their pension plans and disregard their promises. The bill before us will halt this practice. For the first time, our pension laws will require financially healthy companies to pay all promised pension benefits before shutting down a pension plan.

Employers who are in financial distress will be permitted to terminate a pension plan and the PBGC will pay the required level of insured benefits as required under current law. To the extent, however, that the PBGC payments fail to meet the promised level of benefits, workers and retirees will have a claim on a portion of the employer's future pretax profits.

Mr. President, as I indicated, the bill also includes several changes in the procedures for terminating a pension plan that are intended to prevent abuses.

First, an employer will be required to provide 30-day notice to unions before instituting a termination.

Second, the PBGC will be required to audit a random selection of pension plan participants in every plan that is terminated, and plan sponsors will be required to inform participants of the factors used in computing their benefit entitlements. These changes are clearly necessary in light of the findings of the GAO report which was requested by Senator HATCH on the PBGC termination process. The GAO found that:

> PBGC policies for confirming by letter that participants of a selected sample of sufficient plans are receiving entitled benefits are not being implemented for all sampled plans. Also, key variables used in computing participants' benefits are not confirmed with participants of the plans sampled. In contrast, PBGC confirms key data with all participants of insufficient plans for which it assumes trusteeship responsibility. In effect, PBGC processes result in participants of sufficient plans receiving less assurance that their benefits have been correctly computed and paid than participants of insufficient plans.

A third important change, Mr. President, will allow pension plan participants to petition the PBGC to bring to the attention of the agency any concerns or issues that they consider important. If a sufficient number of participants petition the PBGC, the employer is prohibited from removing assets from the plan until 90 days after the PBGC determines that it is prepared to issue a notice of sufficiency. During this period, the PBGC is required to consider the participants' comments. The PBGC will process no-

tices of intent to terminate in the same manner as prescribed by current law. This participant comment period will apply to all notices of intent to terminate filed with the PBGC before March 1, 1986. In the interim, the Labor Department is mandated to report to Congress recommendations of legislative changes needed to protect participants.

These, as well as the other procedural changes for plan terminations do not address the legality or appropriateness of the "guidelines on asset reversions" released by the Pension Benefit Guarantee Corporation on May 24, 1984. This in no way should be construed as a congressional ratification of those guidelines. I believe that neither current law nor the provisions of this bill permit spinoff terminations of termination/reestablishments. These issues are currently being litigated. I hope that Congress will address itself to the whole issue of termination reversions, if not now, then immediately after receiving the Labor Department's study mandated by this measure.

Mr. President, I believe that the reforms contained in this measure are a significant step in the right direction.

Mr. NICKLES. Mr. President, contained in the package reported from the Labor and Human Resources Committee are a series of amendments reforming the single employer termination provisions of title IV of ERISA. These amendments are based on the package of reforms sent to the Hill by the administration earlier this year. These reforms compliment the premium increase reported by the Senate Finance Committee in their reconciliation instructions—from $2.60 to $8.10 per participant per year. Currently the deficit in the PBGC's single employer account is about $600 million. I would like it noted for the record that this deficit does not take into account the pending termination of Wheeling-Pittsburgh's plan—a termination that apparently will dump another $475 million on the PBGC.

Essentially these amendments are designed to reduce the number of underfunded single employer defined benefit pension plans that, upon termination, become the responsibility of the PBGC. At termination of these underfunded plans, the PBGC is obligated under current law to pay that portion of the benefit guaranteed by ERISA. These amendments provide additional protection to the insurance system by limiting access to these plans that are able to demonstrate "distress"—under specific criteria. The PBGC is also granted the statutory basis for seeking 10 percent of the plan sponsor's pre-tax profits for up to 10 years to cover the insufficiency assumed by the PBGC. Of course this provision is only applicable to plan sponsors that continue in business past the termination of the pension plan. This 10 percent pre-tax requirement is in addition to current ERISA provisions requiring a plan sponsor terminating an underfunded plan to forfeit up to 30 percent of its net worth to cover the asset insufficiency. The Labor and Human Resources Committee believes, as the hearings have demonstrated, that this net worth forfeiture is illusory; frequently these plan sponsors have little or no net worth and the PBGC is forced to assume vast amounts of liability.

While the 10 percent pre-tax requirement may appear harsh, the Labor and Human Resources Committee believes it is a fair exchange for permitting distressed plan sponsors the legal right to jettison their pension obligations. This legislation grants the parties the right to agree to alternative terms to satisfy the liability to the PBGC if they so chose.

In addition to a "distress" termination, this legislation provides an alternative termination for those employers who seek to terminate but are financially healthy. Under a "standard" termination, these plans may close out their affairs once asset levels are brought up to the vested levels promised by the plan sponsor. The provision of current law allowing a shallow "freeze" would be unaffected.

There are several additional provisions of this legislation that need to be discussed; I agreed to certain provisions which I am less than enthusiastic about. One provision, for instance, requires those plan sponsors that survive termination and are obligated for the 10-percent pre-tax profits provision to pay an additional 5 percent of pre-tax profits to beneficiaries and participants, if necessary, to make up the difference between the guaranteed level and the vested level. Admittedly, this provision has nothing to do with the solvency of the PBGC but Senator KENNEDY and other members of the Labor and Human Resources Committee insisted on its inclusion.

Senator METZENBAUM sought a provision placing a 9-month moratorium on the reversion of excess assets upon the termination of overfunded plans. I opposed this, but have agreed to a provision that, in some circumstances, will provide for either a 14-day or a 90-day delay in the issuance of a notice of sufficiency by the PBGC. This provision is temporary; it expires on March 1, 1986. Concurrently, we have also asked for a DOL study of the asset reversion question to be submitted by February 1, 1986. Hopefully, the ensuing legislative recommendations, if any, will put this issue to rest once and for all.

The proposed "plan asset" amendment is to apply only to publicly registered real estate entities. It is not intended to either mandate or suggest a pattern for plan asset regulation concerning the venture capital industry. Venture capital makes a vital contribution to our economic well-being and it is therefore important that any plan asset regulation not adversely affect venture capital.

The Secretary of Labor has written Senators urging the adoption of these amendments. I would like to have his letter inserted in the RECORD.

The letter follows:

U.S. DEPARTMENT OF LABOR,
Washington, DC, October 15, 1985.

Hon. PETE V. DOMENICI,
Chairman, Senate Budget Committee, Washington, DC

DEAR MR. CHAIRMAN: The budget reconciliation bill reported to the Senate floor by the Budget Committee on October 1, 1985, includes a vitally needed premium increase and program reforms for the Pension Benefit Guaranty Corporation (PBGC). The PBGC's single-employer insurance fund had a $462 million deficit as of September 30, 1984, and a negative cash flow. This deficit has grown substantially since then, and the negative cash flow situation has been further exacerbated. Both these factors have corresponding adverse impacts on the financial integrity of the PBGC and the Federal deficit, respectively.

I understand that the Budget Committee has listed the PBGC reforms, which were added to the reconciliation package by the Labor and Human Resources Committee, as "possible extraneous amendments" because they supposedly would have no impact on Federal outlays. I want to advise you that this is not the case. In fact, their adoption would lead to a significant avoidance of outlays in the Federal budget. These outlays would be avoided immediately, and the amount avoided would grow substantially as the years pass. The proposed reforms are inextricably intertwined with the premium increase request, which would have had to be higher if the reforms were not a part of the proposal.

Specifically, the program reforms are intended to deal with situations in which a company can, under existing law, "dump" unfunded pensions benefits on the PBGC and continue in business with little or no liability for these benefits. Under provisions approved by the Labor and Human Resources Committee (Labor package), a company that is not in financial distress would no longer be permitted to take advantage of PBGC insurance. Instead, it would be required to continue to fund its terminated pension plans until sufficient assets were on hand to fund all nonforfeitable benefits. In addition, if a contress terminates its plan and subsequently continues to do business, the Labor package provides for increased PBGC recoveries in the form of a percentage of future profits in the ongoing company.

The PBGC estimates that approximately 20 percent of its claims to date have resulted from terminations of plans of ongoing concerns. Without the proposed reforms, claims of this kind will continue and increase substantially in the future. While it is impossible to quantify preprecisely the timing or magnitude of these losses, we can expect, at a minimum, to achieve average annual savings of $35 million over the next 20 years.

The reforms included in the Labor package will have an immediate and lasting budgetary impact for two reasons. First, the standard termination provision will forestall come claims that would otherwise have been made against the PBGC's Single Employer Insurance Funds. Second, the proposed amendment to the current employer liability provision will serve to increase PBGC's recoveries on plans which do terminate. Both of these provisions will reduce the PBGC's losses and improve its cash flow, thereby having a significant favorable

impact on the PBGC's revolving fund. This fund is included in the unified Federal budget, and charges to it increase total Federal outlays. Therefore, the corresponding avoidance or reduction of claims against PBGC will have an immediate favorable impact on the Federal budget.

The two reforms noted above were included in the President's fiscal year 1986 Budget submission to Congress. I would also like to note that in addition to the above reforms, there are two other reforms which were part of the Administration's proposed single employer legislation and the President's fiscal year 1986 budget but are not in the Labor package. These include a provision to provide security for certain minimum funding waviers, and a provision to expressly prevent attempts by sponsors to inappropriately "dump" liabilities on the PBGC through certain corporate restructurings (e.g., mergers or acquisitions).

These provisions are key elements of the Administration's single employer reform proposal. They were not included in the Labor package since they were within the jurisdiction of the Finance Committee. However, both of these provisions would result in real, significant and immediate savings for PBGC with corresponding reductions in the in the Federal deficit. The savings from these provisions can be expected to grow substantially in the future due to the recent increase in minimum funding waivers and to general corporate merger and acquacquisition activity. Candidly, I am very concerned that related abuses of the insurance system will increase substantially if these provisions are not enacted, with resulting adverse consequences for the PBGC and the Federal deficit. Therefore, we are continuing to seek incoproration of these propsals as part of the final budget reconciliation bill.

For these reasons, I believe the PBGC reforms are at least as important—and at least as critical to the budget reconciliation process—as an increase in the PBGC premium. While the Administration may seek to improve the specific language of the reform proposals included in the reconciliation bill, we feel it is imperative that they continue to be associated with the budget reconciliation process in order to ensure the financial integrity of the PBGC insurance system and to help reduce the Federal deficit.

I would appreciate any consideration and support you can give me in this regard.

The Office of Management and Budget has advised that there is no objection to the submission of this letter to Congress from the standpoint of the Administration's program.

Very truly yours,

WILLIAM E. BROCK.

Mr. HELMS. Mr. President, the budget reconciliation package for agriculture provides a substantial contribution to the overall deficit reduction plan. According to the estimates provided by the Congressional Budget Office, if enacted, the changes offered by the Committee on Agriculture, Nutrition, and Forestry will save $8.084 billion over the next 3 fiscal years. This amounts to about 11.6 percent of the total savings contained in the reconciliation package.

The changes recommended by the Committee on Agriculture, Nutrition, and Forestry to achieve the savings required by reconciliation are contained in title I of S. 1730. The bulk of the savings in title I come from changes in the area of farm credit. The committee recommendations in this area would achieve savings of $7.167 billion over 3 years. In addition, mandating the sale of certain dairy products and changes in the Food Stamp Program would save $331 million and $586 million, respectively. However, it is with regret that I should note that the Senate voted to add back $165 million of the food stamp savings.

In order to meet the reconciliation instruction, the Committee on Agriculture, Nutrition, and Forestry recommended that certain provisions of the farm bill be included in reconciliation. More specifically, the committee recommended enactment of the mandatory dairy sales provision of title I, Agricultural Exports and Public Law 480; Title XIV, Food Stamps and Commodity Distribution, and Title XVII, Agricultural Credit.

These provisions are basically two titles from a farm bill that contains 19 titles. I had hoped that the Committee on Agriculture, Nutrition, and Forestry would produce a bill that would achieve savings in enough areas that we would be able to deal with the entire bill in reconciliation. However, that did not prove to be the case. In fact, the farm bill reported by the committee, S. 1714, exceeds the budget allocated in the budget resolution by more than $9 billion. And that includes the $8 billion in savings that are also included in the reconciliation package.

Mr. President, I for one, will be interested to see how the majority of Senators plan to deal with this budget busting farm bill. I mention this because Senators should be aware of the budget aspects of the farm bill as they deal with the recommendations of the Committee on Agriculture, Nutrition, and Forestry embodied in reconciliation.

For those who don't already know, as chairman of the committee, this Senator felt compelled to vote against the farm bill, because it so greatly exceeds the budget resolution, and because it will result in very bad farm policy. However, the principal problems with the farm bill are not in the provisions that have been included in the reconciliation package before us. So I would urge Senators to support these provisions in title I of the reconciliation bill as I do. But I would also encourage Senators to keep in mind that we are scheduled to take up the farm bill as soon as we complete action on reconciliation—and that bill is a budget buster.

Mr. President, let me take just a few minutes to outline some of the major provisions of title I of the reconciliation bill before us.

FARM CREDIT

The farm credit provisions make necessary adjustments to enable farm borrowers to find alternative credit sources to the FmHA insured loan programs. In 1975, FmHA held only 3 percent of the nonreal estate farm debt, or $1.11 billion. In 1984, the market share of the nonreal estate debt held by FmHA had grown to an astounding 15 percent or $15.48 billion. This percentage continues to grow in 1985.

The committee believes that a gradual transition to loan guarantees is an acceptable alternative to our current loan programs, which rely more heavily on direct Government lending. Providing for the credit needs of our Nation's farmers and ranchers should be a joint effort between Government and the private sector. Commercial bankers, lenders of the Cooperative Farm Credit System, the Farmers Home Administration, as well as others, should each meet their obligation in providing a level of loan assistance. The committee recognizes that the role of Government in providing credit should more appropriately be in guaranteeing loans made by the private sector. Through aggressive use of Government loan guarantees, credit will be made available from the private sector to all borrowers who can adequately demonstrate repayment ability, experience, and other factors which indicate a reasonable chance for success.

Furthermore, through the use of loan guarantees, FmHA exposed the borrowers to a wide range of loan servicing and counseling available in the private sector. The tremendous demands placed upon FmHA personnel in recent years makes adequate loan servicing nearly impossible. Many farm borrowers derive great benefit making decisions affecting their operations. A cooperative arrangement in which the Government's role is that of issuing loan guarantees to viable borrowers who have obtained credit from private lenders will benefit agriculture now and in the future.

Other provisions of the credit bill can be found in the report on either the reconciliation bill or on the farm bill.

FOOD STAMPS

Title I provides for the reauthorization of the Food Stamp Program for 4 more years. The bill also makes certain changes in program operations in order to provide more equitable treatment of recipients within the Food Stamp Program by closing loopholes and establishing more consistent and logical treatment of certain sources of income and certain expenses. The bill also establishes in several instances, and permits in others, greater consistency with other Federal assistance programs, primarily the Aid to Families With Dependent Children Program.

While minor benefit reductions may occur for certain households, this has not been a primary focus of the committee's reauthorization. Such changes occur primarily as a result of attempts to make the Food Stamp Program more internally consistent with existing provisions and to coordinate food stamp policy more closely with other programs.

When provisions of the bill are fully implemented, these modest benefit changes will, on average, be more than offset by the increased purchasing power for recipients resulting from the prohibition on State and local sales taxes now being imposed on food stamp purchases in some States. Thus, the overall budget impact of the committee bill is to increase overall food stamp purchasing power without increased cost to the Federal taxpayer. Indeed, coupled with the savings attributable to the error rate sanction provision, the taxpayers will obtain an improved program with lower Federal expenditures. Additionally, maintaining the Puerto Rico Nutrition Assistance Program at its current level of $825 million annually will contribute to the continued stabilization of program costs.

The committee bill is consistent with congressional action in 1981 and 1982 designed to stabilize food stamp spending which had been escalating dramatically.

The committee bill is estimated by the Congressional Budget Office to result in expenditures of $12.547 billion during fiscal year 1986, climbing by roughly $500 million increments to an annual cost of $14 billion in fiscal year 1989.

The committee bill does not reverse any of the significant changes adopted in the Food Stamp Program in 1981 or 1982.

MANDATORY DAIRY SALES—EXPORT SALE OF DAIRY PRODUCTS

The committee adopted a provision from S. 251 which would mandate the sale for the export of at least 150,000 metric tons of dairy products owned by the Commodity Credit Corporation during each of the fiscal years 1983, 1984, and 1985. These sales are to be made at prices not less than the minimum prices established in the international dairy arrangement.

Few industries have been so effectively shut out of the world market because of other countries' subsidies as has the American dairy industry. Although our dairy industry is the largest in the free world, the United States is not a major factor in the international market for dairy products. Our absence from this market has much to do with our failure to compete for an equitable share of the world market on an equal basis with other exporting nations, primarily those of the European Economic Community.

Through the use of export subsidies, the Community has taken a share of the world market well out of proportion to their overall share of world production. Even though U.S. price supports are at levels comparable to the EEC—$13.10 per hundredweight versus $12.81, respectively—and U.S. production is nearly 50 percent of the total production of the member nations of the EEC combined, our share of the world market is but one-sixth of the share held by the EEC.

In order to gain a more equitable share of the world dairy market, Congress has previously encouraged the Secretary of Agriculture to sell surplus dairy products held by the Commodity Credit Corporation on the world market. Specifically, as part of the Agriculture and Food Act of 1981, this committee adopted a proposal by Senator MELCHER directing that the Secretary of Agriculture use existing authorities "to the fullest extent practicable" to make sales of Commodity Credit Corporation held dairy products in international markets. A similar directive appeared in the fiscal year 1983 Agriculture Appropriations Act and, in the closing days of the 97th Congress, the Senate approved a resolution offered by Senator BOSCHWITZ again urging that action be taken to move dairy products acquired by the Commodity Credit Corporation into foreign trade channels.

In spite of these directives, the Department of Agriculture sold only a nominal amount of Commodity Credit Corporation-owned dairy products on the world market. Sales amounted to 50,416 tons in 1980, 62,000 tons in 1981, and 146,000 tons in 1982.

In light of this response to congressional directive, the committee agreed to mandate the sale of a reasonable minimum amount of dairy products annually for fiscal years 1983, 1984, and 1985. Although concerns were voiced about the ability of the world market to bear the additional influx of dairy products, the 150,000 metric tons mandated by the committee is abut 6.3 percent of last year's total international trade in butter, cheese, and nonfat dry milk, excluding intra-EEC trade. Moreover, the Department nearly reached this target last year without significant disruption of the world market.

By mandating the sale of dairy products, it is the committee's intent to indicate the seriousness of its concern about the predatory trade practices employed by nations such as those within the European Economic Community. With respect to dairy product trade, other countries must take our concerns, and our resolve to have a fair opportunity for U.S. products to compete in world markets, seriously. Whether this is being done, is questionable.

The dairy product sale provision is one of the few mandated items in this legislation. Enactment of this provision will ensure that firm action is taken by the administration that will demonstrate our resolve on the issue of predatory trade practices. For these reasons, the committee believes that mandated dairy product sales is an essential element to be included in any effective agricultural trade legislation.

The export sale of dairy products will also promote a solid basis for the development of new overseas markets for U.S. dairy products, as well as other products. Becuase of our general unwillingness to sell surplus dairy products overseas, the United States' share of international trade in butter, cheese, and nofat dry milk is only 8 percent. This compares to a nearly 50 percent share for the EEC. Increased sales of Commodity Credit Corporation dairy products will begin to establish a more adequate share of this trade for American dairy products, with the realistic prospect that new and long-lasting markets for our dairy production may be developed.

SUPPORT FOR UDAG PROGRAM

Mr. HEINZ. Mr. President, as the reconciliation bill is sent to conference, I want to remind the conferees of the Senate's affirmation of the UDAG Program, and of the importance of this program to our cities and towns.

The UDAG program has been extremely successful at doing what it was designed to do—assist in the redevelopment of blighted urban areas. The facts speak for themselves. UDAG funds projects in urban areas that would not be built without the UDAG funds. Each UDAG dollar leverages 6 private dollars of investment. It is estimated that 625,000 new jobs have been created by UDAG projects throughout the Nation and studies have documented that between 60-70 percent of all UDAG created jobs go to low- and moderate-income people.

Although the program was designed to inject new life into dying communities, many Senators had expressed concern that the UDAG selection criteria excluded their cities from receiving UDAG's. Being from a State that has benefited from the program, I could understand the concern of my colleagues. For that reason, I worked with Senators RIEGLE, GRASSLEY, D'AMATO, SASSER, SPECTER, and others to find a fair and balanced method of UDAG funding distribution that would allow all regions of the country to participate in the program.

The distribution method we devised is included in this reconciliation bill. It provides for two pots of money. One pot, containing two-thirds of the UDAG funds, will be distributed based on community distress. The other one-third will be distributed based on project quality. These changes, along with others that are included in the revised program, give all cities in this country a chance to participate in the UDAG program while retaining the original goal of the program—providing assistance to distressed urban areas.

Nineteen hundred and eighty-six will be the first year the new distribution criteria will be used. I believe it will be very successful and that many Senators who do not now support the program because they have not had experience with it, will discover the effectiveness of the UDAG program. Retaining the program through 1987 will give us 2 years to study the effectiveness of the new distribution system and make an informed decision on the future of UDAG.

Mr. President, I am well aware that the changes to the UDAG program included in this bill could reduce the number of UDAG's awarded to the severely distressed cities in Pennsylvania. After 2 years, I may decide that the program has strayed too far from its original goals and should be eliminated, but I have seen the positive results of the program and I am willing to give it 2 more years to determine whether the new and, "improved" formula will work as effectively as the old one. Our main objective, at this point, should be to ensure the continuation of a valuable and successful program.

Mr. LEVIN. Mr. President, I will vote for the reconciliation bill because it is essential that we take steps now to deal with the overwhelming domestic issue which confronts this country—the budget deficit. This deficit threatens our long-term prosperity here at home and reduces our ability to compete abroad.

My vote for this bill should not, however, be taken as agreement with every aspect of it. In any bill this large, with any deficit reduction this deep, there are provisions which I could not to support standing in a vacuum. For example, the new customs fees on across border traffic from Canada and Mexico will work a hardship on commerce both in terms of time and money. I am particularly sensitive to this in light of the heavy flow of traffic between Canada and my home State of Michigan.

An amendment by Senator DECONCINI has mitigated the budensome impact of these fees somewhat from what was contained in the original bill. However, it is my hope that this provision could be worked on further in the conference with the House to lessen even further the disruptive effects which it will have on border States.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senate will now proceed to the consideration of H.R. 3128 which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Finance with an amendment in the nature of a substitute.

The PRESIDING OFFICER. The committee amendment falls.

Mr. DOLE. Mr. President, I move that all after the enacting clause in H.R. 3128 be stricken and the text of S. 1730, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of, the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, let me indicate to my colleagues, if I could have their attention briefly, it is still our hope to move to the Compact of Free Association. I have been advised by the distinguished chairman of the Energy Committee, Senator MCCLURE, that it is urgent that we act on that legislation.

We believe we may have been able to accommodate the concern of Senators BOREN, GOLDWATER, STENNIS, and others with reference to political action committee amendments and other amendments.

We have been trying to get a unanimous-consent agreement.

That is a bill that has been held hostage more or less for the past 3 months. I am not as well versed on it as the distinguished chairman of that committee.

But we wish to move to the consideration of that bill and complete action on that bill this evening. We believe that can be done in a couple of hours. If that were the case, we would not come in tomorrow.

On Monday, we would lay before the Senate the farm bill. As indicated last night, we would remain on the farm bill subject to the discretion of the managers, until we complete action on that, hopefully next Thursday or Friday.

Then we have the recess and then we are back, and then on December 2, we would then bring up the amendment by Senator BOREN on a Monday and dispose of this before noon on Tuesday, December 3.

Mr. MCCLURE. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I yield.

Mr. MCCLURE. I do not want to fly under false colors here tonight because there is a Hatch amendment, a Finance Committee amendment, a Hart amendment, and a committee amendment dealing with compensation. Unless everything went better than we have a right to expect, it is going to take, I would think, 3 or 4 hours to complete the compact.

I am perfectly willing to do that tonight, but I am also perfectly willing to do it tomorrow, whatever the majority leader and membership might decide.

Mr. HART. Mr. President, will the majority leader yield?

Mr. DOLE. I yield.

Mr. HART. Mr. President, mine is an oil import fee amendment. I am perfectly willing to have a reasonable time limit.

Mr. DOLE. Mr. President, I understood from visiting with Members earlier there was a disposition to dispose of this tonight and not be in session tomorrow.

Mr. HARKIN. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I yield.

Mr. HARKIN. Mr. President, following up on the conversation last night, I looked at the unanimous-consent request that is on paper regarding the Compact of Free Association, and I counted at least 8 hours of time.

Mr. DOLE. Some of that has been taken care of.

We just had another indication it would not take an hour on that amendment. Some of those will be tabled.

We do not intend to take much time on this side.

So I would guess if we could move on that fairly quickly we could be finished by 9:30 p.m. or come back at 9 a.m. in the morning.

I would rather dispose of it tonight. That still does not interfere with the farm bill discussion we had last night.

Mr. HARKIN. Again, as I looked at that unanimous-consent agreement, the number of hours that could be on it, then if we are not in session tomorrow, then we come back on the Compact of Free Association on Monday, and it will spill over again into Tuesday.

Mr. DOLE. No. If we do not complete it tonight we start on the farm bill Monday.

Mr. MCCLURE. We will be in tomorrow.

Mr. DOLE. We will be in tomorrow. That is correct.

Mr. HARKIN. I have the assurance of the majority leader we will take up the farm bill next week and not be interfered with?

Mr. DOLE. The Senator does not have to have it. We are going to bring it up.

Mr. DOMENICI. Mr. President, if the majority leader will yield, I wish to thank all Senators for the cooperation on this bill. It has been a long time getting here.

It will take about $85.5 billion off the current policy baseline of the budget the next 3 years.

We hope it will pass here tonight and go to conference in the next couple of weeks.

We lose about $52 million a day each day we fail to pass it and send it to the President.

There are too many people for me to name. I thank all of them and the staff for the concerted effort and all

they have done to help get it here tonight.

Mr. JOHNSTON. Mr. President, I endorse that.

Mr. DOLE. Mr. President, let me indicate that immediately following this vote we are going to take the Compact of Free Association. We will try to get a time agreement, and I am hopeful we can satisfy the Senator from Oklahoma [Mr. BOREN] by indicating we will bring up his amendment on December 2 with a vote occurring on December 3.

We discussed this with the Senator from Mississippi and the Senator from Arizona, and I think that should be satisfactory.

Mr. DOMENICI. Vote. Regular order.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

The PRESIDING OFFICER (Mr. LAXALT). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 93, nays 6 as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—93

Abdnor	Glenn	Mitchell
Armstrong	Goldwater	Moynihan
Baucus	Gore	Murkowski
Bentsen	Gorton	Nickles
Biden	Gramm	Nunn
Bingaman	Grassley	Packwood
Boren	Hart	Pell
Boschwitz	Hatch	Pressler
Bradley	Hawkins	Proxmire
Bumpers	Hecht	Pryor
Byrd	Heflin	Quayle
Chafee	Heinz	Riegle
Chiles	Helms	Rockefeller
Cochran	Hollings	Roth
Cohen	Humphrey	Rudman
Cranston	Inouye	Sarbanes
D'Amato	Johnston	Sasser
Danforth	Kassebaum	Simon
DeConcini	Kasten	Simpson
Denton	Kennedy	Specter
Dixon	Lautenberg	Stafford
Dodd	Laxalt	Stennis
Dole	Leahy	Stevens
Domenici	Levin	Symms
Durenberger	Long	Thurmond
Eagleton	Lugar	Trible
East	Mathias	Wallop
Evans	Matsunaga	Warner
Exon	Mattingly	Weicker
Ford	McClure	Wilson
Garn	McConnell	Zorinsky

NAYS—6

Andrews	Harkin	Melcher
Burdick	Kerry	Metzenbaum

NOT VOTING—1

Hatfield

So the bill, H.R. 3128, as amended, was passed, as follows:

H.R. 3128

Resolved, That the bill from the House of Representatives (H.R. 3128) entitled "An Act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process", do pass with the following amendments:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Consolidated Omnibus Budget Reconciliation Act of 1985".

TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

AGRICULTURE, FORESTRY, AND RELATED PROGRAMS

Subtitle A—Agricultural Exports

Sec. 101. Export sales of dairy products

Subtitle B—Food Stamps and Commodity Distribution

PART 1—FOOD STAMPS

Sec. 111. Publicly operated community health centers.
Sec. 112. Thrifty food plan.
Sec. 113. Disabled members.
Sec. 114. Food distribution program on Indian reservations.
Sec. 115. Third-party payments.
Sec. 116. Educational loans.
Sec. 117. Nonrecurring lump-sum payments.
Sec. 118. Child support payments.
Sec. 119. Homeownership component of shelter costs.
Sec. 120. Energy assistance payments.
Sec. 121. Self-employment income.
Sec. 122. Monthly reporting and retrospective budgeting.
Sec. 123. Burial plots.
Sec. 124. Categorical eligibility.
Sec. 125. Job training benefits.
Sec. 126. Employment and training program.
Sec. 127. Aliens.
Sec. 128. Sales tax.
Sec. 129. Alternative means of coupon issuance.
Sec. 130. Simplified applications and standardized benefits.
Sec. 131. Redemption of coupons.
Sec. 132. Eligibility of the homeless.
Sec. 133. Certification of information.
Sec. 134. Verification.
Sec. 135. Photographic identification cards.
Sec. 136. Staggered issuance of coupons.
Sec. 137. Fraud detection.
Sec. 138. Food stamp information and applications at Social Security Administration offices.
Sec. 139. Special supplemental food program.
Sec. 140. Disqualification of retail food stores and civil money penalties.
Sec. 141. Liability for overissuance of coupons.
Sec. 142. Interest on claims against State agencies.
Sec. 143. Collection of claims.
Sec. 144. Food stamp intercept of unemployment benefits.
Sec. 145. Administrative and judicial review.
Sec. 146. Hours of operation.
Sec. 147. Error rate reduction program.
Sec. 148. Geographical error-prone profiles.
Sec. 149. Cash payment pilot projects.
Sec. 150. Cash change pilot project.
Sec. 151. Authorization for appropriations.
Sec. 152. Transfer of funds.
Sec. 153. Puerto Rico block grant.

PART 2—COMMODITY DISTRIBUTION

Sec. 160. Transfer of section 32 commodities.
Sec. 161. Commodity distribution program.
Sec. 162. Commodity supplemental food program.
Sec. 163. Temporary emergency food assistance program.
Sec. 164. Distribution of surplus commodities to special nutrition projects.
Sec. 165. Donations by military commissaries.

PART 3—EFFECTIVE DATES

Sec. 170. Effective dates.

Subtitle C—Agricultural Credit

Sec. 181. Eligibility for real estate and operating loans.
Sec. 182. Water, waste facility, and community facility loans and grants.
Sec. 183. Sale of notes and security.
Sec. 184. Rural industrialization assistance.
Sec. 185. Farm recordkeeping training for limited resource borrowers.
Sec. 186. Emergency loans.
Sec. 187. Settlement of claims.
Sec. 188. Transfer of loan accounts.
Sec. 189. Oil and gas royalties.
Sec. 190. Processing of loan applications.
Sec. 191. Appeals.
Sec. 192. Disposition and leasing of farmland.
Sec. 193. Release of normal income security.
Sec. 194. Loan summary statements.
Sec. 195. Authorization of loan amounts.
Sec. 196. Interest rate reduction program.
Sec. 197. Study of Farm and Home Plan.
Sec. 198. Study of Farm Credit System.

TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

AGRICULTURE, FORESTRY, AND RELATED PROGRAMS

Subtitle A—Agricultural Exports

EXPORT SALES OF DAIRY PRODUCTS

SEC. 101. (a) In each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, the Secretary of Agriculture shall sell for export, at such prices as the Secretary determines appropriate, not less than 150,000 metric tons of dairy products owned by the Commodity Credit Corporation.

(b) Such sales shall be made through the Commodity Credit Corporation under existing authority available to the Secretary or the Commodity Credit Corporation.

(c) Through September 30, 1988, the Secretary shall report semiannually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the volume of sales made under this section.

Subtitle B—Food Stamps and Commodity Distribution

PART 1—FOOD STAMPS

PUBLICLY OPERATED COMMUNITY HEALTH CENTERS

SEC. 111. (a) Section 3 of the Food Stamp Act of 1977 (7 U.S.C. 2012) is amended—

(1) in subsection (f), by striking out "which" and all that follows through "providing" and inserting in lieu thereof ", or a publicly operated community health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide"; and

(2) by inserting ", or a publicly operated community health center," after "private nonprofit institution" in the last sentence of subsection (i).

(b) Section 10 of such Act (7 U.S.C. 2019) is amended by inserting "publicly operated community health centers or" after "purchased, and".

THRIFTY FOOD PLAN

SEC. 112. The first sentence of section 3(o) of the Food Stamp Act of 1977 (7 U.S.C. 2012(o)) is amended by striking out "fifty-four" and inserting in lieu thereof "fifty".

DISABLED MEMBERS

SEC. 113. Section 3(r) of the Food Stamp Act of 1977 (7 U.S.C. 2012(r)) is amended—

(1) by inserting "or" after the semicolon at the end of clause (1); and

(2) by striking out clauses (2) through (6) and inserting in lieu thereof the following new clause:

"(2) receives benefits, assistance, or payments under a Federal law based on a determination of blindness or disability, or for whom such determination is made, under criteria that the Secretary determines are the same as, or provide for substantially the same degree of disability or blindness as, the criteria for disability or blindness established under sections 216(i), 221(i), and 223(d) of the Social Security Act (42 U.S.C. 416(i), 421(i), and 423(d)).".

FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS

SEC. 114. (a) Section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)) is amended by inserting after the third sentence the following new sentence: "For purposes of preventing dual participation in the food stamp program and the commodity distribution program established under section 4(a) of the Agriculture and Consumer Protection Act (7 U.S.C. 612c note), the Secretary and State agencies may match the social security account numbers of participants in the food stamp program against the account numbers of applicants for assistance under the commodity distribution program.".

(b) Section 4(a) of the Agriculture and Consumer Protection Act (7 U.S.C. 612c note) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) In carrying out the program described in paragraph (1), the Secretary shall—

"(A) require, as a condition of eligibility for participation in such program, that each household member furnish to the State agency the social security account number or numbers of such member; and

"(B) use such account numbers in the administration of such program.".

THIRD-PARTY PAYMENTS

SEC. 115. Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) is amended—

(1) by inserting "except as provided in subsection (k)," after "household," in subsection (d)(1); and

(2) by adding at the end thereof the following new subsection:

"(k)(1) For purposes of subsection (d)(1), except as provided in paragraph (2), assistance provided to a third party on behalf of a household by a State or local government shall be considered money payable directly to the household if the assistance is provided in lieu of—

"(A) a regular benefit payable to the household for living expenses under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

"(B) a benefit payable to the household for living expenses under—

"(i) a State or local general assistance program; or

"(ii) other basic assistance program (as determined by the Secretary).

"(2) Paragraph (1) shall not apply to—

"(A) medical assistance;

"(B) child care assistance;

"(C) energy assistance;

"(D) assistance provided by a State or local housing authority; or

"(E) emergency and special assistance, to the extent excluded in regulations prescribed by the Secretary.".

EDUCATIONAL LOANS

SEC. 116. (a) The proviso of section 5(d)(5) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)(5)) is amended by inserting after "child care expenses," the following: "and no portion of any educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like,".

(b) Section 5(k) of such Act (as added by section 115(2)) is amended by adding at the end thereof the following new paragraph:

"(3) For purposes of subsection (d)(1), educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like, provided to a third party on behalf of a household, shall be treated as money payable directly to the household.".

NONRECURRING LUMP-SUM PAYMENTS

SEC. 117. Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) (as amended by section 115(2)) is further amended—

(1) by inserting ", except as provided in subsection (l)" after "settlements" in subsection (d)(8); and

(2) by adding at the end thereof the following new subsection:

"(l) If the amount of benefits received by a household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.) is reduced or terminated as the result of the receipt of a nonrecurring lump-sum payment, the income of the household for purposes of the food stamp program shall include the amount of such benefits the household would have received but for such payment.".

CHILD SUPPORT PAYMENTS

SEC. 118. Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) (as amended by section 117(2)) is further amended—

(1) in subsection (d)—

(A) by striking out "and" at the end of clause (11); and

(B) by inserting before the period at the end thereof the following: ", and (13) at the option of a State agency and subject to subsection (m), child support payments that are excluded under section 402(a)(8)(A)(vi) of the Social Security Act (42 U.S.C. 602(a)(8)(A)(vi))"; and

(2) by adding at the end thereof the following new subsection:

"(m) If a State agency excludes payments from income for purposes of the food stamp program under subsection (d)(13), such State agency shall pay to the Federal Government, in a manner prescribed by the Secretary, the cost of any additional benefits provided to households in such State that arise under such program as the result of such exclusion.".

HOMEOWNERSHIP COMPONENT OF SHELTER COSTS

SEC. 119. Section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) is amended—

(1) by striking out "the homeownership component of shelter costs" in clause (1) of the second sentence and inserting in lieu thereof "the homeowners' cost, maintenance, and repair component of shelter costs"; and

(2) by striking out "homeownership costs" in subclause (i) of the proviso of clause (2) of the fourth sentence and inserting in lieu thereof "the homeowners' cost, maintenance, and repair component of shelter costs".

ENERGY ASSISTANCE PAYMENTS

SEC. 120. Section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) is amended by inserting after the fifth sentence the following new sentences: "If a State agency elects to use a standard utility allowance, the agency shall use a combined allowance for all such households".

SELF-EMPLOYMENT INCOME

SEC. 121. Section 5(f)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2014(f)(1)) is amended—

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

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

"(B) If the average amount of self-employment income of a household does not reflect accurately the actual monthly circumstances of such household because such household experienced a substantial increase or decrease in business earnings, the self-employment income of such household shall be calculated on the basis of the anticipated earnings of such household.".

MONTHLY REPORTING AND RETROSPECTIVE BUDGETING

SEC. 122. (a) Section 5(f)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2014(f)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) Household income shall be calculated on a prospective basis, as provided in paragraph (3)(A), in the case of—

"(i) migrant farmworker households; and

"(ii) households—

"(I) that have no earned income; and

"(II) in which all adult members are elderly or disabled members.";

(2) in subparagraph (B)—

(A) in clause (i)—

(i) by inserting "under the first sentence of section 6(c)(1)" after "permitted"; and

(ii) by striking out "under section 6(c)(1) of this Act,";

(B) by striking out "(ii)" and all that follows through "members,"; and

(C) in clause (iii)—

(i) by striking out "(iii)" and inserting in lieu thereof "(ii)";

(ii) by striking out "other than a migrant household" and inserting in lieu thereof "other than a household described in subparagraph (A)";

(iii) by inserting "under the first sentence of section 6(c)(1)" after "not required"; and

(iv) by striking out "under section 6(c)(1) of this Act"; and

(3) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) Except as provided in subparagraphs (A) and (B), household income for households that have earned income, and for households that include any member who has recent work history, shall be calculated on a retrospective basis, as provided in paragraph (3)(B).

"(D) Household income for all other households may be calculated, at the option of the State agency, on a prospective basis as provided in paragraph (3)(A) or on a retrospective basis as provided in paragraph (3)(B).".

(b) Section 6(c)(1) of such Act (7 U.S.C. 2015(c)(1)) is amended—

(1) in the first sentence, by striking out "certain" and all that follows through "members," and inserting in lieu thereof "households with respect to which household income is required by section 5(f)(2)(C) to be determined on a retrospective basis"; and

(2) by inserting after the second sentence the following new sentence: "State agencies may require households, other than households with respect to which household income is required by section 5(f)(2)(A) to be calculated on a prospective basis, to file periodic reports of household circumstances in accordance with standards prescribed under the preceding provisions of this paragraph by the Secretary.".

BURIAL PLOTS

SEC. 123. Section 5(g) of the Food Stamp Act of 1977 (7 U.S.C. 2014(g)) is amended by adding at the end thereof the following new sentence: "The Secretary shall exclude from financial resources the value of a burial plot for each member of a household.",

CATEGORICAL ELIGIBILITY

SEC. 124. (a) Subsection (j) of section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014(j)) is amended to read as follows:

"(j) Notwithstanding subsections (a) through (i), a State agency may consider a household to have satisfied the income and resource limitations for participation in the food stamp program prescribed under this section if—

"(1) each member of the household receives benefits under—

"(A) a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

"(B) the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.); or

"(C) a State plan approved under title I, X, XIV, or XVI of such Act (42 U.S.C. 301 et seq.); and

"(2) the income of the household does not exceed the applicable income standards of eligibility established under subsection (c)(2).".

(b) Section 11(i) of such Act (7 U.S.C. 2020(i)) is amended by adding at the end thereof the following new sentence: "A State agency may not deny or terminate benefits to a household under the food stamp program solely on the basis of the denial or termination of benefits to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.), or a State plan approved under title I, X, XIV, or XVI of such Act (42 U.S.C. 301 et seq.) without a separate determination by such agency that such household has failed to satisfy the eligibility requirements for participation in the food stamp program.".

(c) Section 17 of such Act (7 U.S.C. 2026) is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

JOB TRAINING BENEFITS

SEC. 125. Section 5 of the Food Stamp Act of 1977 (7 U.S.C. 2014) (as amended by section 118(2)) is further amended by adding at the end thereof the following new subsection:

"(n) Notwithstanding section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)), allowances, earnings, and payments received by individuals as a result of participation in a program authorized under such Act, other than needs-based allowances and payments received under such program, shall be considered income for purposes of the food stamp program.".

EMPLOYMENT AND TRAINING PROGRAM

SEC. 126. (a) Section 6(d) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)) is amended—

(1) in paragraph (1)—

(A) by striking out "eighteen" in the matter preceding clause (i) of the first sentence and inserting in lieu thereof "sixteen";

(B) by striking out clause (ii) of the first sentence and inserting in lieu thereof the following new clause: "(ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under such paragraph, including such reasonable employment requirements as are prescribed by the State agency in accordance with such paragraph, except that the period of ineligibility under this clause shall be two months;"; and

(C) by adding at the end thereof the following new sentences: "A period of ineligibility for a violation of a requirement of this paragraph shall terminate when the household member who committed the violation complies with such requirement. If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to a sanction for such violation and, if the household is otherwise eligible, may resume participation in the program. Any other household that such person thereafter joins shall be ineligible for the balance of the period of ineligibility.";

(2) in paragraph (2)—

(A) by striking out "a dependent child under age six or of an incapacitated person" in clause (B) and inserting in lieu thereof "(i) a dependent child under age six, except that a State agency may require such parent or guardian to comply with such work requirements if the child is age three or over and adequate child care is available, or (ii) an incapacitated person;";

(B) by striking out "or" at end of clause (D); and

(C) by inserting before the period at the end thereof the following: "; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school on a full-time basis"; and

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

"(4)(A) A State agency shall implement an employment and training program designed by the State agency, pursuant to guidelines established by the Secretary, to assist members of households receiving benefits under this Act in gaining skills, training, or experience that will increase their ability to obtain regular employment.

"(B) In the case of persons who participated in the food stamp program for a period of more than 30 consecutive days and who are subject to employment requirements under this section, a State agency shall place in such program not less than—

"(i) by September 30, 1987, 25 percent of such persons;

"(ii) by September 30, 1988, 35 percent of such persons; and

"(iii) by September 30, 1990 and thereafter, 45 percent of such persons.

"(C) For purposes of this Act, an 'employment and training program' means a program that—

"(i) contains one or more of the components described in subparagraph (D), (E), (F), or (G); and

"(ii) meets criteria established by the Secretary.

"(D) A job search training program described in this subparagraph shall include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including education programs, determined by the State agency to expand the job search abilities or employability of persons subject to the program.

"(E)(i) A program described in this subparagraph shall be designed—

"(I) to improve the employability of household members through actual work experience or training, or both; and

"(II) to enable individuals employed under such program to become employed promptly in regular public or private employment.

"(ii) A State agency may use a facility of a State public employment office or agency operating a program under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) to find employment and training opportunities for household members under the program described in this subparagraph.

"(iii) A State agency shall limit any employment or training experience assignment under such program to a project that serves a useful public purpose in a field such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, or day care.

"(iv) To the extent possible, a State agency shall use the prior training, experience, and skills of a member participating in such program in making appropriate employment experience assignments under such program.

"(v) In carrying out a program under this subparagraph, a State agency—

"(I) shall not provide any work that has the effect of replacing the employment of an individual not participating in such program; and

"(II) shall provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

"(F) A program described in this subparagraph shall include a workfare program operated under section 20.

"(G) A program described in this subparagraph shall include other programs, projects, and experiments (such as a supported work program), approved by the Secretary, that are aimed at accomplishing the purposes of employment and training programs established under this paragraph.

"(H) A State agency may provide that participation in an employment and training program established under this paragraph may supplement or supplant other requirements imposed on individuals subject to such program.

"(I)(i) In carrying out a program under this paragraph, a State agency may exempt, in accordance with criteria established by the Secretary, a category of household members from a requirement imposed under such program if the State agency determines that the application of such requirement to such category is impracticable due to factors such as the availability of work opportunities and the cost effectiveness of employment requirements.

"(ii) In making a determination under clause (i), a State agency may designate a category consisting of all such household members residing in a specified area of a State.

"(iii) A State agency shall also exempt from such requirement, or suspend the application of such requirement to, an individual household member not included in such category but with respect to whom the State agency determines that the application of such requirement is impracticable due to personal circumstances such as a lack of job readiness and employability, the remote location of work opportunities, and unavailability of dependent care.

"(iv) An exemption of a category or member by a State agency under this subparagraph shall not affect the requirement of such agency to comply with subparagraph (B).

"(J)(i) The total number of hours of work in an employment and training program carried out under this paragraph required of members of a household in any month collectively, together with the hours of work of such members in any program carried out under section 20, may not exceed a number of hours equal to the allotment of the household for such month divided by the higher of

the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(ii) The total number of hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in any program carried out under section 20 and any hours worked for compensation (in cash or in kind) in any other capacity, may not exceed 120 hours per month.

"(K)(i) A State agency shall establish such requirements as the State agency determines to be appropriate for individuals required to participate in a program described in subparagraph (C) that the State agency has not selected as a result of such subparagraph. Such requirements may vary among participants.

"(ii) A State agency may operate a program described in subparagraph (C) that the State agency has not selected as a result of such subparagraph.

"(iii) A State agency shall permit individuals not required to participate in an employment and training program, or who have completed or are in the process of participating in such program, to participate in any program established under this paragraph.

"(L) The Secretary shall issue guidelines that, to the maximum extent practicable, enable a State agency to design and operate an employment and training program under this paragraph that is compatible and consistent with similar programs operated within the State.

"(M) A State agency shall reimburse participants for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month.

"(N)(i) The Secretary shall assure that State agencies comply with the requirements of this paragraph and section 11(e)(22).

"(ii) If the Secretary determines that a State agency has failed to comply with such a requirement, the Secretary may withhold from such State in accordance with section 16 (a), (c), and (h) such funds as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14.

"(O) The Secretary shall ensure, to the extent practicable and in cooperation with the Secretary of Labor, that employment and training programs are provided to Indians residing on an Indian reservation in proportion to the number of persons described in subparagraph (B) that reside on such reservation.".

(b) Section 11(e) of such Act (7 U.S.C. 2020(e)) is amended—

(1) by striking out "and" at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof a semicolon; and

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

"(22) the plans of the State agency for carrying out employment and training programs under section 6(d)(4), including the nature and extent of such programs and the geographic areas and households to be covered under such programs;".

(c) Section 16 of such Act (7 U.S.C. 2025) is amended by adding at the end thereof the following new subsection:

"(h)(1) For the payment to each State agency of the full cost (except as otherwise provided in this subsection) of carrying out an employment and training program under section 6(d)(4), the Secretary shall allocate from funds appropriated for such fiscal year under section 18(a)(1)—

"(A) for the fiscal year ending September 30, 1986, $40,000,000;

"(B) for the fiscal year ending September 30, 1987, $50,000,000;

"(C) for the fiscal year ending September 30, 1988, $60,000,000; and

"(D) for the fiscal year ending September 30, 1989, $75,000,000.

"(2) If in carrying out such program a State agency incurs costs that exceed the amount payable to the State agency under paragraph (1), the Secretary shall pay such State agency in accordance with subsection (a) an amount equal to 50 percent of such additional costs.

"(3) The Secretary shall in accordance with subsection (a) reimburse each State agency in an amount equal to 50 percent of the total amount of payments made or costs incurred by the State agency to reimburse participants for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in an employment and training program established under section 6(d)(4) but not to exceed $25 in the aggregate per month.

"(4) Funds provided to a State agency under this subsection—

"(A) may be used only for operating an employment and training program under section 6(d)(4); and

"(B) may not be used for carrying out other provisions of this Act.

"(5)(A) The Secretary shall monitor the employment and training programs carried out by State agencies under section 6(d)(4) to measure their effectiveness in terms of—

"(i) the increase in the numbers of household members who obtain employment; and

"(ii) the numbers of such members who retain such employment,

as a result of their participation in such programs.

"(B) Not later than January 1, 1989, the Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of such employment and training programs.".

(d) Subsection (b) of section 20 of such Act (7 U.S.C. 2029(b)) is amended to read as follows:

"(b)(1) A household member shall be exempt from workfare requirements imposed under this section if such member is—

"(A) exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2); or

"(B) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program required under title IV of the Social Security Act (42 U.S.C. 601 et seq.).

"(2)(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

"(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month, by

"(ii) the higher of the Federal or State minimum wage in effect for such month.

"(B) In no event may any such member be required to participate in such program more than 120 hours per month.

"(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.".

ALIENS

SEC. 127. (a) Clause (2) of the first sentence of section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended—

(1) in subclause (D), by striking out "section" and all that follows through "calamity" and inserting in lieu thereof "sections 207 and 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158)"; and

(2) in subclause (F), by striking out "because" and all that follows through "opinion".

(b) The last sentence of section 6(f) of such Act is amended by striking out "(less a pro rata share)".

SALES TAX

SEC. 128. (a) Section 7(b) of the Food Stamp Act of 1977 (7 U.S.C. 2106(b)) is amended by inserting ", except that the transaction of coupons may not be a taxable event" after "such stores".

(b) The amendment made by subsection (a) shall apply to a State (or political subdivision thereof) beginning on the first day of the fiscal year that commences in the calendar year during which the first session of the legislature of such State is convened following the date of enactment of this Act.

ALTERNATIVE MEANS OF COUPON ISSUANCE

SEC. 129. Section 7(g)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2016(g)(1)) is amended by striking out "may" in the matter preceding clause (A) and inserting in lieu thereof "shall".

SIMPLIFIED APPLICATIONS AND STANDARDIZED BENEFITS

SEC. 130. Section 8 of the Food Stamp Act of 1977 (7 U.S.C. 2017) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary may permit a State, on request, to operate a program under which a household shall be considered to have satisfied the application requirements prescribed under section 5(a) and the income and resource requirements prescribed under subsections (d) through (g) of section 5 if such household—

"(A) includes one or more members who are recipients of—

"(i) aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

"(ii) supplemental security income under title XVI of such Act (42 U.S.C. 1381 et seq.); or

"(iii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.); and

"(B) has an income that does not exceed the applicable income standard of eligibility described in section 5(c).

"(2) Except as provided in paragraph (3), a State that elects to operate a program under this subsection shall base the value of an allotment provided to a household under subsection (a) on—

"(A)(i) the size of the household; and

"(ii)(I) benefits paid to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act; or

"(II) the income standard of eligibility for medical assistance under title XIX of such Act; or

"(B) at the option of the State, the standard of need for such size household under the programs referred to in clause (A)(ii).

"(3) The Secretary shall adjust the value of allotments received by households under a program operated under this subsection to ensure that the average allotment by household size for households participating in such program and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment that would have been provided under this Act but for the operation of this subsection, for each category of households, respectively, in a State, for any period during which such program is in operation.

"(4) The Secretary shall evaluate the impact of programs operated under this subsection on recipient households, administrative costs, and error rates.

"(5) The administrative costs of such programs shall be shared in accordance with section 16.

"(6) In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such programs, the processing of applications for, and determinations of eligibility to receive, food stamp benefits are simplified and are unified with the processing of applications for, and determinations of eligibility to receive, benefits under such titles of the Social Security Act (42 U.S.C. 601 et seq.).".

REDEMPTION OF COUPONS

SEC. 131. Section 10 of the Food Stamp Act of 1977 (7 U.S.C. 2019) is amended by adding at the end thereof the following new sentence: "A financial institution may not impose on, or collect from, a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in order to defray the costs of complying with a requirement, other than a requirement relating to the cancellation of coupons, for the presentation of coupons by the financial institution to a Federal Reserve bank.".

ELIGIBILITY OF THE HOMELESS

SEC. 132. Section 11(e)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(2)) is amended—

(1) by striking out the semicolon at the end thereof and inserting in lieu thereof a period; and

(2) by adding at the end thereof the following new sentences: "The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses. In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.".

CERTIFICATION OF INFORMATION

SEC. 133. Section 11(e)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(2)) (as amended by section 132) is further amended by adding at the end thereof the following: "Each adult member of a household that is applying for a coupon allotment (or in the case of a household described in paragraph (9)(A), an adult member of such household that is applying for a coupon allotment) or is required to file a periodic or other report under section 6(c)(1) shall be required to certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment or the report, respectively;".

VERIFICATION

SEC. 134. Section 11(e)(3) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(3)) is amended—

(1) by striking out "only" after "verification";

(2) by inserting ", household size (in any case such size is questionable)," after "Act)"; and

(3) by striking out "any factors" and all that follows through "by the Secretary" and inserting in lieu thereof "such other eligibility factors as the State agency determines are necessary".

PHOTOGRAPHIC IDENTIFICATION CARDS

SEC. 135. Section 11(e)(16) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(16)) is amended—

(1) by striking out "last sentence" and inserting in lieu thereof "fourth sentence";

(2) by inserting "and would be cost effective" after "integrity";

(3) by striking out the semicolon at the end thereof and inserting in lieu thereof a period; and

(4) by adding at the end thereof the following: "The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;".

STAGGERED ISSUANCE OF COUPONS

SEC. 136. Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) (as amended by section 126(b)) is further amended by adding at the end thereof the following new paragraph:

"(23) at the option of the State agency, for the staggered issuance of coupons to recipients throughout a month, except that not more than 40 days may elapse between the issuance of coupons to a household as a result of such staggered issuance;".

FRAUD DETECTION

SEC. 137. Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) (as amended by section 136) is further amended by adding at the end thereof the following new paragraph:

"(24) in a project area in which 5,000 or more households participate in the food stamp program, for the establishment and operation of a unit for the detection of fraud in the food stamp program, including the investigation, and assistance in the prosecution, of such fraud; and".

FOOD STAMP INFORMATION AND APPLICATIONS AT SOCIAL SECURITY ADMINISTRATION OFFICES

SEC. 138. (a) Clause (2) of the first sentence of section 11(i) of the Food Stamp Act of 1977 (7 U.S.C. 2020(i)) is amended—

(1) by inserting "applicants for or" after "members are"; and

(2) by striking out "permitted" and all that follows through "office" and inserting in lieu thereof "informed of the availability of benefits under the food stamp program, and the availability of assistance in making a simple application to participate in such program, at a local office of the Social Security Administration".

(b) Subsection (j) of section 11 of such Act is amended to read as follows:

"(j)(1) Under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services, an individual who is an applicant for or recipient of benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) shall be informed of the availability of benefits under the food stamp program, and the availability of a simple application to participate in such program, at a local office of the Social Security Administration.

"(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, regarding services to be provided in such an office under this subsection and subsection (i), in a manner to ensure that—

"(A) an applicant for or recipient of benefits under title II of the Social Security Act is adequately notified in such office that assistance may be available to such applicant or recipient under this Act;

"(B) an application for assistance under this Act received from a household in which all members of such household are applicants for or recipients of assistance under the supplemental security income program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) be forwarded immediately after receipt to the State agency in an efficient and timely manner; and

"(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to carry out this subsection and subsection (i).".

(c) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the nature and extent of costs incurred by such Secretary to comply with subsections (i) and (j) of section 11 of the Food Stamp Act of 1977 (as amended by subsections (a) and (b), respectively).

SPECIAL SUPPLEMENTAL FOOD PROGRAM

SEC. 139. (a) Section 12 of the Food Stamp Act of 1977 (7 U.S.C. 2021) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), a retail food store or wholesale food concern that has been disqualified under subsection (a) shall be ineligible during the period of disqualification to participate in the special supplemental food program established under section 17 of such Act.".

(b) The second sentence of section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended by striking out "this Act or the regulations issued pursuant to this Act" and inserting in lieu thereof "this Act or section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or the regulations issued to carry out this Act or such section".

DISQUALIFICATION OF RETAIL FOOD STORES AND CIVIL MONEY PENALTIES

SEC. 140. (a) Section 12 of the Food Stamp Act of 1977 (7 U.S.C. 2021) (as amended by section 139(a)) is further amended by adding at the end thereof the following new subsection:

"(f)(1)(A) If a retail food store or wholesale food concern disqualified under subsection (a) is sold or otherwise transferred, such store or concern shall be subject to a civil money penalty.

"(B) The amount of such penalty shall—

"(i) be established by the Secretary through regulations; and

"(ii) reflect that portion of the disqualification period that has not yet expired.

"(C) If such store or concern has been disqualified permanently, the amount of such penalty shall be double the penalty imposed for a 10-year disqualification period, as determined under regulations issued by the Secretary.

"(D) Notwithstanding the imposition of such penalty, the disqualification period imposed under subsection (b) shall continue in effect as to the seller or transferor of such store or concern.

"(2)(A) After a civil money penalty imposed under paragraph (1) has become final pursuant to section 14(a), the Secretary may request the Attorney General to institute a civil action to collect such penalty in a district court of the United States for any dis-

trict in which the person against whom the penalty is imposed is found, resides, or transacts business.

"(B) Such court shall have jurisdiction to hear and decide such action.

"(C) The validity and amount of such penalty shall not be subject to review in such action.".

(b) Section 9(b) of such Act (7 U.S.C. 2018(b)) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2)(A) If a buyer or transferee of a retail food store or wholesale food concern has actual or constructive notice of an outstanding civil penalty imposed under section 12(f) at the time of the sale or transfer of such store or concern, such store or concern may not accept or redeem coupons until the Secretary receives full payment of such penalty.

"(B) To the extent permitted under law, the Secretary shall ensure that an encumbrance created under this paragraph is recorded in an appropriate State or local public office.

"(C) The seller or transferor of such store or concern shall advise a buyer or transferee prior to the sale or transfer of the limitation imposed by this paragraph.

"(D) The store or concern of the buyer or transferee may not, as a result of the sale or transfer of such store or concern, be required to furnish a bond under section 12(d).".

LIABILITY FOR OVERISSUANCE OF COUPONS

SEC. 141. Section 13(a) of the Food Stamp Act of 1977 (7 U.S.C. 2022(a)) is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) Each adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.".

INTEREST ON CLAIMS AGAINST STATE AGENCIES

SEC. 142. Section 13(a) of the Food Stamp Act of 1977 (7 U.S.C. 2022(a)) (as amended by section 141) is further amended by adding at the end thereof the following new paragraph:

"(3) A State agency shall be liable for interest on a claim assessed against the State agency under this Act from the date of the final administrative determination made with respect to such claim under section 14(a).".

COLLECTION OF CLAIMS

SEC. 143. (a) Section 13(b)(1)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022(b)(1)(B)) is amended—

(1) by striking out "may" and inserting in lieu thereof "shall"; and

(2) by inserting ", unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective" before the period at the end thereof.

(b) Section 13(b)(2)(A) of such Act is amended—

(1) by inserting after the first sentence the following new sentence: "State agencies may collect any claim against a household arising from the overissuance of coupons as the result of an error of the State agency by reducing the monthly allotments of the household."; and

(2) by striking out "These collections" in the last sentence and inserting in lieu thereof "Collections under this subparagraph".

FOOD STAMP INTERCEPT OF UNEMPLOYMENT BENEFITS

SEC. 144. (a) Section 13 of the Food Stamp Act of 1977 (7 U.S.C. 2022) is amended by adding at the end thereof the following new subsection:

"(c)(1) As used in this subsection, the term 'uncollected overissuance' means the amount of an overissuance of coupons, as determined under subsection (b)(1), that has not been recovered pursuant to subsection (b)(1).

"(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)), whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

"(3) A State agency may recover an uncollected overissuance—

"(A) by—

"(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

"(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

"(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.".

(b)(1) Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) (as amended by section 137) is further amended by adding at the end thereof the following new paragraph:

"(25) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 13(c).".

(2) Section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)) is amended—

(A) by striking out "or" the second place it appears and inserting in lieu thereof a comma; and

(B) by inserting after "such Act," the following: "or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.),".

(3) Section 303(d) of the Social Security Act (42 U.S.C. 503(d)) is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) For purposes of this paragraph, the term 'unemployment compensation' means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

"(B) The State agency charged with the administration of the State law—

"(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons,

"(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

"(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

"(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

"(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977, or

"(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act, and

"(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

"(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

"(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.".

(c)(1) The proviso of the first sentence of section 16(a) of the Food Stamp Act of 1977 (7 U.S.C. 2025(a)) is amended by striking out "13(b)(1) of this Act" and inserting in lieu thereof "13 (b)(1) and (c)".

(2) The first sentence of section 18(e) of such Act (7 U.S.C. 2027(e)) is amended by striking out "13(b) of this Act" and inserting in lieu thereof "13 (b) and (c)".

ADMINISTRATIVE AND JUDICIAL REVIEW

SEC. 145. The last sentence of section 14(a) of the Food Stamp Act of 1977 (7 U.S.C. 2023(a)) is amended—

(1) by striking out "an application" and inserting in lieu thereof "on application"; and

(2) by striking out "showing of irreparable injury" and inserting in lieu thereof "showing that the applicant is likely to prevail on the merits of the case".

HOURS OF OPERATION

SEC. 146. Section 16(b)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2025(b)(1)) is amended by inserting ", including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program," after "States".

ERROR RATE REDUCTION PROGRAM

SEC. 147. Section 16(d) of the Food Stamp Act of 1977 (7 U.S.C. 2025(d)) is amended—

(1) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following new paragraphs:

"(2) If the payment error rate of a State agency for a fiscal year exceeds 5 percent, the State agency shall, other than for good cause shown, be liable to the Secretary for such fiscal year in an amount equal to—

"(A) the sum of—

"(i) the product obtained by multiplying—

"(I) the number of percentage points (or a fraction thereof) by which such rate exceeds 5 percent (but not to exceed 2 points); by

"(II) 75 percent of the total value of all coupons issued by the State agency for such fiscal year; and

"(ii) the product obtained by multiplying—

"(I) the number of percentage points (or a fraction thereof) by which such rate exceeds 7 percent; by

"(II) the total value of all coupons issued by the State agency for such fiscal year; less

"(B) 75 percent of the value of any amounts that—

"(i) are recovered or collected by the State agency during such fiscal year under this Act for allotments—

"(I) issued to ineligible households; or

"(II) overissued to eligible households; and

"(ii) are not retained by the State agency in accordance with subsection (a).

"(3) If the liability of a State agency under this subsection is not contested by such agency or is ultimately determined to be valid, such penalty shall be collected by the Secretary by means of—

"(A) payment by such State agency;

"(B) withholding amounts otherwise payable to such agency under subsection (a); or

"(C) other means of collection authorized under chapter 37 of title 31, United States Code.";

(2) by striking out "the appropriate level of a State agency's federally funded share of administrative costs under this subsection" in paragraph (4) and inserting in lieu thereof "the payment error rate of a State agency"; and

(3) by striking out "reduces a State agency's federally funded share of administrative costs" in paragraph (5) and inserting in lieu thereof "determines that a State agency is liable".

GEOGRAPHICAL ERROR-PRONE PROFILES

SEC. 148. Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) (as amended by section 126(c)) is further amended by adding at the end thereof the following new subsection:

"(i)(1) The Inspector General of the Department of Agriculture may use quality control information made available under this section to determine which project areas have payment error rates (as defined in subsection (d)(1)) that impair the integrity of the food stamp program.

"(2) The Secretary may require a State agency to carry out new or modified procedures for the certification of households in areas identified under paragraph (1) if the Secretary determines such procedures would improve the integrity of the food stamp program and be cost effective.

"(3) Not later than 12 months after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and each 12 months thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that lists project areas identified under paragraph (1) and describes any procedures required to be carried out under paragraph (2).".

CASH PAYMENT PILOT PROJECTS

SEC. 149. The last sentence of section 17(b)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2026(b)(1)) is amended by striking out "1985" and inserting in lieu thereof "1989".

CASH-CHANGE PILOT PROJECT

SEC. 150. Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) (as amended by section 124(c)) is further amended by adding at the end thereof the following new subsection:

"(f) The Secretary may conduct a pilot project to test the effect on households and retail food stores that participate in the food stamp program of requiring households that use coupons to purchase food to pay cash for the amount of such purchase that exceeds the value of the lowest coupon denomination issued.".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 151. The first sentence of section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended—

(1) by striking out "and" after "1984;"; and

(2) by inserting before the period at the end thereof the following: "; not in excess of $12,984,000,000 for the fiscal year ending September 30, 1986; not in excess of $13,572,000,000 for the fiscal year ending September 30, 1987; not in excess of $14,154,000,000 for the fiscal year ending September 30, 1988; and not in excess of $14,695,000,000 for the fiscal year ending September 30, 1989".

TRANSFER OF FUNDS

SEC. 152. (a) Section 18 of the Food Stamp Act of 1977 (7 U.S.C. 2027) is amended by adding at the end thereof the following new subsection:

"(f) No funds appropriated to carry out this Act may be transferred to the Office of the Inspector General, or the Office of the General Counsel, of the Department of Agriculture.".

(b) The amendment made by this section shall become effective on October 1, 1986.

PUERTO RICO BLOCK GRANT

SEC. 153. Section 19 of the Food Stamp Act of 1977 (7 U.S.C. 2028) is amended—

(1) by striking out "noncash" in subsection (a)(1)(A); and

(2) in the second sentence of subsection (b)(1)(A)—

(A) by striking out "July 1" and inserting in lieu thereof "April 1"; and

(B) by striking out "a single agency which shall be" in clause (i) and inserting in lieu thereof "the agency or agencies directly".

PART 2—COMMODITY DISTRIBUTION

TRANSFER OF SECTION 32 COMMODITIES

SEC. 160. Section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c), is amended by adding at the end thereof the following new sentence: "A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.".

COMMODITY DISTRIBUTION PROGRAM

SEC. 161. (a) Section 4(a)(1) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) (as amended by section 114(b)) is amended by striking out "during fiscal years 1982, 1983, 1984, and 1985" and inserting in lieu thereof "during the period beginning October 1, 1985, and ending September 30, 1989".

(b) Section 4(b) of such Act is amended by striking out "18" and inserting in lieu thereof "19".

COMMODITY SUPPLEMENTAL FOOD PROGRAM

SEC. 162. (a) Section 5(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) is amended—

(1) in clause (1)—

(A) by striking out "two pilot projects" and inserting in lieu thereof "three pilot projects"; and

(B) by striking out "two years" and inserting in lieu thereof "September 30, 1989"; and

(2) by striking out "1985" in clause (2) and inserting in lieu thereof "1989".

(b) Section 5 of such Act is amended by adding at the end thereof the following new subsections:

"(f)(1) If the Secretary determines that the amount of funds appropriated to carry out this section exceeds the requirement for operating sites in existence, and at levels of assistance, in effect on the date of such determination, the Secretary shall approve additional applications made for eligible projects to participate in the commodity supplemental food program.

"(2) In making such determination, the Secretary shall consider the funding needs of existing operating sites for both the current and succeeding fiscal years.

"(g) If a local agency that administers the commodity supplemental food program determines that the amount of funds made available to the agency to carry out this section exceeds the amount of funds necessary to provide assistance under such program to women, infants, and children, the agency, with the approval of the Secretary, may permit low-income elderly persons to participate in and be served by such program under such terms and conditions as are prescribed by the Secretary.".

TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM

SEC. 163. (a) Section 202 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new subsections:

"(c) In addition to any commodities described in subsection (a), in carrying out this Act, the Secretary may use agricultural commodities and the products thereof made available under clause (2) of the second sentence of section 32 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (7 U.S.C. 612c).

"(d) Commodities made available under this Act shall include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal.

"(e) Effective January 1, 1986, the Secretary shall submit semiannually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the types and amounts of commodities made available for distribution under this Act.".

(b) Section 203B(b) of such Act is amended by adding at the end thereof the following new sentence: "Each State agency shall encourage distribution of such commodities in rural areas.".

(c) Section 203C(a) of such Act is amended by adding at the end thereof the following new sentence: "The Secretary shall submit annually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the existence and extent of such displacements and substitutions.".

(d) Section 204(b) of such Act is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking out "the fiscal years ending September 30, 1984, and September 30, 1985" and inserting in lieu thereof "each of the fiscal years ending September 30, 1984, through September 30, 1987"; and

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

"(2) Effective January 1, 1986, to be eligible to receive payments for storage and distribution costs under paragraph (1), a State must match on a dollar for dollar basis the amount of such payments made to such State.".

(e) Subsection (c) of section 210 of such Act is amended to read as follows:

"(c)(1) Not later than October 1, 1985, and October 1, 1986, the Secretary shall publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available under this Act during each of the fiscal years ending September 30, 1986, and September 30, 1987, respectively.

"(2) The actual types and quantities of commodities made available under this Act may differ from such estimates.".

(f) Section 212 of such Act is amended to read as follows:

"PROGRAM TERMINATION

"SEC. 212. (a) Except for section 207 and as provided in subsections (b) and (c), this Act shall terminate on September 30, 1987.

"(b) Section 203 shall terminate on June 30, 1987.

"(c) The amendment made by section 209 shall terminate on September 30, 1989.".

DISTRIBUTION OF SURPLUS COMMODITIES TO SPECIAL NUTRITION PROJECTS

SEC. 164. Section 1114(a) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e) is amended by adding at the end thereof the following new sentence: "Commodities made available under this section shall include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal.".

DONATIONS BY MILITARY COMMISSARIES

SEC. 165. (a) Section 2482 of title 10, United States Code, is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) A commissary store of the Department of Defense may donate surplus, unmarketable food to a local food bank.".

(b) The caption of section 2482 of such title is amended by striking out ": private operation".

PART 3—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 170. (a) Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle shall become effective on the date of enactment of this Act.

(b) Notwithstanding any provision of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) or chapter 5 of part I of title 5, United States Code—

(1) the Secretary of Agriculture shall prescribe interim regulations to ensure that this subtitle and the amendments made by this subtitle are implemented as soon as practicable after such date, but in no event later than March 1, 1986; and

(2) any change in such interim regulations that is made in final regulations issued by the Secretary to implement this subtitle and the amendments made by this subtitle shall be effective on such date as is prescribed by the Secretary.

Subtitle C—Agricultural Credit

ELIGIBILITY FOR REAL ESTATE AND OPERATING LOANS

SEC. 181. (a) Section 302 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1922) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may not restrict eligibility for loans made or insured under this subtitle for purposes set forth in section 303 solely to borrowers of loans that are outstanding on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

(b) Section 311 of such Act (7 U.S.C. 1941) is amended by adding at the end thereof the following new subsection:

"(c) The Secretary may not restrict eligibility for loans made or insured under this subtitle for purposes set forth in section 312 solely to borrowers of loans that are outstanding on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

WATER, WASTE FACILITY, AND COMMUNITY FACILITY LOANS AND GRANTS

SEC. 182. (a) Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) is amended by adding at the end thereof the following paragraph:

"(16)(A) In the approval and administration of a loan made under paragraph (1) for a water or waste disposal facility, the Secretary shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such facility.

"(B) If the Secretary determines that a design or materials, other than those that were recommended, should be used in the water or waste disposal facility, the Secretary shall provide such applicant or borrower with a comprehensive justification for such determination.".

(b) Section 307(a)(3)(A) of such Act (7 U.S.C. 1927(a)(3)(A)) is amended—

(1) by striking out "the poverty line prescribed by the Office of Management and Budget as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d)" and inserting in lieu thereof "the higher of (i) 80 percent of the statewide nonmetropolitan median household income, or (ii) the poverty line as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2),"; and

(2) by adding at the end thereof the following new sentence: "The interest rate on a loan for such facility may not exceed 7 percent per annum if such facility does not qualify for the 5 percent per annum interest rate, but is located in an area where the median household income of the persons to be served by the facility does not exceed 100 percent of the statewide nonmetropolitan median household income.".

(c)(1) The Secretary of Agriculture shall conduct a study of the practicality and cost effectiveness of making loans and grants under section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) for the construction of water and waste disposal facilities in rural areas at individual locations, rather than central or community locations.

(2) Not later than 120 days after the date of enactment of this Act, the Secretary shall submit a report on the results of the study required under paragraph (1) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SALE OF NOTES AND SECURITY

SEC. 183. (a) Section 309(d) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(d)) is amended by striking out the period at the end of the second sentence and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary. All such notes sold on a nonrecourse basis must have been held in the fund for at least 4 years.".

(b) Section 309A(e) of such Act (7 U.S.C. 1929a(e)) is amended by striking out the period at the end of the second sentence and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.".

RURAL INDUSTRIALIZATION ASSISTANCE

SEC. 184. (a) Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking out "also make and insure loans" and inserting in lieu thereof "guarantee loans made"; and

(ii) by striking out "(1)" and all that follows through the period and inserting in lieu thereof "financing the production and distribution of ethanol in rural areas."; and

(B) by striking out the second and fourth sentences;

(2) by striking out subsections (b) and (c);

(3) by striking out the sentence preceding paragraph (1) of subsection (d);

(4) by striking out subsection (e); and

(5) by redesignating subsection (d) (as amended by clause (3)) as subsection (b).

(b)(1) Section 307(a)(4) of such Act (7 U.S.C. 1927(a)(4)) is amended by striking out "sections 304(b), 306(a)(21), and 310B" and inserting in lieu thereof "sections 304(b) and 306(a)(21)".

(2) Section 307(a)(6)(B) of such Act is amended—

(A) by inserting "and" at the end of clause (v);

(B) by striking out clauses (vi) and (vii); and

(C) by redesignating clause (viii) as clause (vi).

(3) Section 309A(g)(8) of such Act (7 U.S.C. 1929a(g)(8)) is amended by striking out "sections 306(a) and 310B" and inserting in lieu thereof "section 306(a)".

FARM RECORDKEEPING TRAINING FOR LIMITED RESOURCE BORROWERS

SEC. 185. The first sentence of section 312(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1942(a)) is amended—

(1) by striking out "and" at the end of clause (10); and

(2) by inserting before the period at the end thereof the following new clause: ", and (12) training in maintaining records of farming and ranching operations for limited resource borrowers receiving loans under section 310D".

EMERGENCY LOANS

SEC. 186. (a) Subsection (b) of section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(b)) is amended to read as follows:

"(b) An applicant shall be ineligible for financial assistance under this subtitle for crop losses if crop insurance was available to the applicant for such crop under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).".

(b) Subsection (a) of section 324 of such Act (7 U.S.C. 1964(a)) is amended to read as follows:

"(a)(1) No loan made or insured under this subtitle may exceed the amount of the actual loss caused by the disaster or $200,000, whichever is less, for each disaster.

"(2) The total principal indebtedness outstanding at any one time for loans made or insured to a borrower under this subtitle may not exceed $400,000.".

(c) Section 324(b)(1) of such Act (7 U.S.C. 1964(b)(1)) is amended by striking out "but (A)" and all that follows through "Secretary" and inserting in lieu thereof "but not in excess of 8 percent per annum".

(d) Section 330 of such Act (7 U.S.C. 1971) is repealed.

(e) The amendment made by subsection (a) shall not apply to a person whose eligibility for an emergency loan is the result of damage to an annual crop planted before the date of enactment of this Act.

SETTLEMENT OF CLAIMS

SEC. 187. Subsection (d) of the second paragraph of section 331 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(d)) is amended to read as follows:

"(d) compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require, to carry out this title. The Secretary may release borrowers or others obligated on a debt incurred under this title from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out—

"(1) on terms more favorable than those recommended by the appropriate county committee utilized pursuant to section 332; or

"(2) after the claim has been referred to the Attorney General, unless the Attorney General approves;".

TRANSFER OF LOAN ACCOUNTS

SEC. 188. Subtitle D of the Consolidated Farm and Rural Development Act is amended by inserting after section 331B (7 U.S.C. 1981b) the following new section:

"SEC. 331C. The Secretary shall permit a borrower of a loan made or insured under this title, with the approval of the head of the appropriate State office of the Farmers Home Administration, to transfer, on a one-time basis, the accounts of such borrower for such loans to a county office of the Farmers Home Administration in an adjacent county.".

OIL AND GAS ROYALTIES

SEC. 189. (a) Subtitle D of the Consolidated Farm and Rural Development Act (as amended by section 188) is amended by inserting after section 331C the following new section:

"SEC. 331D. (a) The Secretary shall permit a borrower of a loan made or insured under this title to make a prospective payment on such loan with proceeds from—

"(1) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

"(2) the sale of oil, gas, or other minerals removed from real property used to secure such loan if—

"(A) the value of the rights to such oil, gas, or other minerals has not been used to secure such loan; and

"(B) the security for such loan is otherwise adequate.

"(b) Subsection (a) shall not apply to a borrower of a loan made or insured under this title with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

(b) Section 204 of the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. 1947 note) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall permit a borrower of a loan made or insured under this title to make a prospective payment on such loan with proceeds from—

"(A) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

"(B) the sale of oil, gas, or other minerals removed from real property used to secure such loan if—

"(i) the value of the rights to such oil, gas, or other minerals has not been used to secure such loan; and

"(ii) the security for such loan is otherwise adequate.

"(2) Paragraph (1) shall not apply to a borrower of a loan made or insured under this title with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

PROCESSING OF LOAN APPLICATIONS

SEC. 190. (a) Subtitle D of the Consolidated Farm and Rural Development Act is amended by inserting after section 333 (7 U.S.C. 1983) the following new section:

"SEC. 333A. (a)(1) The Secretary shall approve or disapprove an application for a loan or loan guarantee made under this title, and notify the applicant of such action, not later than 90 days after the Secretary has received a complete application for such loan or loan guarantee.

"(2) If an application for a loan or loan guarantee under this title is incomplete, the Secretary shall inform the applicant of the reasons such application is incomplete not later than 20 days after the Secretary has received such application.

"(3) If an application for a loan or loan guarantee under this title is disapproved by the Secretary, the Secretary shall state the reasons for the disapproval in the notice required under paragraph (1).

"(b)(1) Except as provided in paragraph (2), if an application for an insured loan under this title is approved by the Secretary, the Secretary shall provide the loan proceeds to the applicant not later than 15 days (or such longer period as the applicant may approve) after the application for the loan is approved by the Secretary.

"(2) If the Secretary is unable to provide the loan proceeds to the applicant within such 15-day period because sufficient funds are not available to the Secretary for such purpose, the Secretary shall provide the loan proceeds to the applicant as soon as practicable (but in no event later than 15 days unless the applicant agrees to a longer period) after sufficient funds for such purpose become available to the Secretary.

"(c) In carrying out the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, the Secretary shall ensure that each request of a lending institution for designation as an approved lender under such program is reviewed, and a decision made on the application, not later than 15 days after the Secretary has received a complete application for such designation.

"(d)(1) As soon as practicable after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Secretary shall take such steps as are necessary to make personnel and other resources of the Department of Agriculture available to the Farmers Home Administration as are sufficient to enable the Farmers Home Administration to expeditiously process loan applications that are submitted by farmers and ranchers.

"(2) In carrying out paragraph (1), the Secretary may use any authority of law provided to the Secretary, including—

"(A) the Agricultural Credit Insurance Fund established under section 309; and

"(B) the employment procedures used in connection with the emergency loan program established under subtitle C.".

(b) Section 333A (a), (b), and (c) of the Consolidated Farm and Rural Development Act (as added by subsection (a)) shall be effective with respect to applications received by the Secretary of Agriculture after the date of enactment of this Act.

APPEALS

SEC. 191. (a) Subtitle D of the Consolidated Farm and Rural Development Act is amended by inserting after section 333A (as added by section 190) the following new section:

"SEC. 333B. (a) The Secretary shall provide an applicant for or borrower of a loan, or an applicant for or recipient of a loan guarantee, under this title who has been directly and adversely affected by a decision of the Secretary made under this title (hereafter in this section referred to as the 'appellant') with written notice of the decision, an opportunity for an informal meeting, and an opportunity for a hearing with respect to such decision, in accordance with regulations issued by the Secretary consistent with this section.

"(b)(1) Not later than 10 days after such adverse decision, the Secretary shall provide the appellant with written notice of the decision, an opportunity for an informal meeting, an opportunity for a hearing, and the procedure to appeal such decision (including any deadlines for filing appeals).

"(2) Upon the request of the appellant and in order to provide an opportunity to resolve differences and minimize formal appeals, the Secretary shall hold an informal meeting with the appellant prior to the initiation of any formal appeal of the decision of the Secretary.

"(c)(1) An appellant shall have the right to have—

"(A) access to the personal file of the appellant maintained by the Secretary, including a reasonable opportunity to inspect and reproduce the file at an office of the Farmers Home Administration located in the area of the appellant; and

"(B) representation by an attorney or nonattorney during the inspection and reproduction of files under subparagraph (A) and at any informal meeting or hearing.

"(2) The Secretary may charge an appellant for any reasonable costs incurred in reproducing files under paragraph (1)(A).".

(b)(1) The Secretary of Agriculture shall conduct a study concerning the administrative appeals procedure used in the farm loan programs of the Farmers Home Administration.

(2) In conducting such study, the Secretary shall examine—

(A) the number and type of appeals initiated by loan applicants and borrowers;

(B) the extent to which initial administrative actions are reversed on appeal;

(C) the reasons that administrative actions are reversed, modified, or sustained on appeal;

(D) the number and disposition of appeals in which the loan applicant or borrower is represented by legal counsel;

(E) the quantity of time required to complete action on appeals and the reasons for delays;

(F) the feasibility of the use of administrative law judges in the appeals process; and

(G) the desirability of electing members of county committees established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(c) Not later than September 1, 1986, the Secretary shall submit a report describing the results of the study required under this section to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

DISPOSITION AND LEASING OF FARMLAND

SEC. 192. Section 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985) is amended—

(1) by striking out "Real" in subsection (b) and inserting in lieu thereof "Except as provided in subsection (e), real";

(2) by striking out "The" in the first sentence of subsection (c) and inserting in lieu thereof "Except as provided in subsection (e), the"; and

(3) by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall to the extent practicable sell or lease farmland adminis-

tered under this title in the following order of priority:

"(A) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(B) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(2)(A) The Secretary shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with paragraph (3), a lease with an option to purchase farmland administered under this title.

"(B) The Secretary shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(C) In leasing such land, the Secretary shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the Secretary determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(3)(A)(i) The Secretary may sell farmland administered under this title through an installment sale or similar device that contains such terms as the Secretary considers necessary to protect the investment of the Federal Government in such land.

"(ii) The Secretary may subsequently sell any contract entered into to carry out clause (i).

"(B) The Secretary shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(C) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the appropriate county committee shall, by majority vote, select the operator who may purchase such land, on such basis as the Secretary may prescribe by regulation.

"(4)(A) If the Secretary determines that farmland administered under this title is not suitable for sale or lease to an operator of not larger than a family-size farm because such farmland is in a tract or tracts that the Secretary determines to be larger than that necessary for family-size farms, the Secretary shall subdivide such land into tracts suitable for such operator.

"(B) The Secretary shall dispose of such subdivided farmland in accordance with this subsection.

"(5) If suitable farmland is available for disposition under this subsection, the Secretary shall—

"(A) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(B) post an announcement of the availability of such farmland in a prominent place in the local office of the Farmers Home Administration that serves the county in which the farmland is located.

"(6) In the case of farmland administered under this title that is highly erodible land (as defined in paragraph (7)), the Secretary may require the use of specified conservation practices on such land as a condition of the sale or lease of such land.

"(7) As used in paragraph (6), the term 'highly erodible land' means land classified by the Soil Conservation Service as class IIIe, IVe, VI, VII, or VIII land under the land capability classification system in effect on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

(b) The Secretary of Agriculture shall implement the amendment made by this section not later than 90 days after the date of enactment of this Act.

RELEASE OF NORMAL INCOME SECURITY

SEC. 193. Section 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985) (as amended by section 192(3)) is further amended by adding at the end thereof the following new subsection:

"(f)(1) As used in this subsection, the term 'normal income security' has the same meaning given such term in section 1962.17(b) of title 7, Code of Federal Regulations (as of January 1, 1985).

"(2) Until such time as the Secretary determines that a loan made or insured under this title should be liquidated, the Secretary shall release from the normal income security provided for such loan an amount sufficient to pay the essential household and farm operating expenses of the borrower, as determined by the Secretary.".

LOAN SUMMARY STATEMENTS

SEC. 194. Section 337 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1987) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) As used in this subsection, the term 'summary period' means—

"(A) the period beginning on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and ending on the date on which the first loan summary statement is issued after such date of enactment; or

"(B) the period beginning on the date of issuance of the preceding loan summary statement and ending on the date of issuance of the current loan summary statement.

"(2) On the request of a borrower of a loan made or insured (but not guaranteed) under this title, the Secretary shall issue to such borrower a loan summary statement that reflects the account activity during the summary period for each loan made or insured under this title to such borrower, including—

"(A) the outstanding amount of principal due on each such loan at the beginning of the summary period;

"(B) the interest rate charged on each such loan;

"(C) the amount of payments made on and their application to each such loan during the summary period and an explanation of the basis for the application of such payments;

"(D) the amount of principal and interest due on each such loan at the end of the summary period;

"(E) the total amount of unpaid principal and interest on all such loans at the end of the summary period;

"(F) any delinquency in the repayment of any such loan;

"(G) a schedule of the amount and date of payments due on each such loan; and

"(H) the procedure the borrower may use to obtain more information concerning the status of such loans.".

AUTHORIZATION OF LOAN AMOUNTS

SEC. 195. (a) 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)(A) For each of the fiscal years ending September 30, 1986, through September 30, 1988, 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 an amount equal to $4,000,000,000, of which not less than $520,000,000 shall be for farm ownership loans under subtitle A.

"(B) Subject to subparagraph (C), such amount shall be apportioned as follows:

"(i) For the fiscal year ending September 30, 1986—

"(I) $2,000,000,000 for insured loans, of which not less than $260,000,000 shall be for farm ownership loans; and

"(II) $2,000,000,000 for guaranteed loans, of which not less than $260,000,000 shall be for guarantees of farm ownership loans.

"(ii) For the fiscal year ending September 30, 1987—

"(I) $1,500,000,000 for insured loans, of which not less than $195,000,000 shall be for farm ownership loans; and

"(II) $2,500,000,000 for guaranteed loans, of which not less than $325,000,000 shall be for guarantees of farm ownership loans.

"(iii) For the fiscal year ending September 30, 1988—

"(I) $1,000,000,000 for insured loans, of which not less than $130,000,000 shall be for farm ownership loans; and

"(II) $3,000,000,000 for guaranteed loans, of which not less than $390,000,000 shall be for guarantees of farm ownership loans.

"(C) For each of the fiscal years referred to in subparagraph (A), the Secretary may transfer not more than 25 percent of the amounts authorized for guaranteed loans to amounts authorized for insured loans.

"(D) For each of the fiscal years ending September 30, 1986, through September 30, 1988, emergency loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitle C from the Agricultural Credit Insurance Fund in such amounts as are necessary to meet the needs resulting from natural disasters.

"(2)(A) For each of the fiscal years ending September 30, 1986, through September 30, 1988, loans for the production and distribution of ethanol in rural areas may be guaranteed in accordance with section 310B from the Rural Development Insurance Fund established under section 309A in the amount of $150,000,000.

"(B) For the fiscal year ending September 30, 1986, water and waste facility loans may be insured, or made to be sold and insured, in accordance with section 306 from the Rural Development Insurance Fund in the amount of $75,000,000.".

(b) Section 346(e)(1) of such Act is amended—

(1) by striking out "20" each place it appears and inserting in lieu thereof "25"; and

(2) by striking out "fiscal year 1984" and inserting in lieu thereof "each fiscal year".

(c) Section 346 of such Act (as amended by subsection (b)) is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

INTEREST RATE REDUCTION PROGRAM

SEC. 196. Effective only for the period beginning on the date of enactment of this Act and ending September 30, 1988, the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 349. (a) The Secretary shall establish and carry out in accordance with this section an interest rate reduction program for loans guaranteed under this title.

"(b) Under such program, the Secretary shall enter into a contract with, and make payments to, a legally organized institution to reduce during the term of such contract the interest rate paid by a borrower on a

guaranteed loan made by such institution if—

"(1) the borrower—

"(A) is unable to obtain sufficient credit elsewhere to finance the actual needs of the borrower at reasonable rates and terms, taking into consideration private and cooperative rates and terms for a loan for a similar purpose and period of time in the community in or near which the borrower resides;

"(B) is otherwise unable to make payments on such loan in a timely manner; and

"(C) has a total estimated cash income during the 12-month period beginning on the date such contract is entered into (including all farm and nonfarm income) that will equal or exceed the total estimated cash expenses to be incurred by the borrower during such period (including all farm and nonfarm expenses); and

"(2) the lender reduces during the term of such contract the annual rate of interest payable on such loan by a minimum percentage specified in such contract.

"(c) In return for a contract entered into by a lender under subsection (b) for the reduction of the interest rate paid on a loan, the Secretary shall make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the annual rate of interest payable on such loan, except that such payments may not exceed the cost of reducing such rate by more than 2 percent.

"(d) The term of a contract entered into under this section to reduce the interest rate on a guaranteed loan may not exceed the outstanding term of such loan, or 3 years, whichever is less.

"(e)(1) Notwithstanding any other provision of this title, the Agricultural Credit Insurance Fund established under section 309 may be used by the Secretary to carry out this section.

"(2) The total amount of funds used by the Secretary to carry out this section may not exceed $490,000,000.".

STUDY OF FARM AND HOME PLAN

SEC. 197. (a) The Secretary of Agriculture shall conduct a study of the appropriateness of the Farm and Home Plan (Form FmHA 431-2) used by the Farmers Home Administration in connection with loans made or insured under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(b) After carrying out such study, if the Secretary finds the plan is inappropriate, the Secretary shall—

(1) evaluate other alternative farm plan forms for use in connection with such loans;

(2) evaluate the need to develop a new farm plan form for such use; and

(3) specify the steps that should be taken to improve or replace the current form.

(c) Not later than 120 days after the date of enactment of this Act, the Secretary shall report the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

STUDY OF FARM CREDIT SYSTEM

SEC. 198. (a) The Governor of the Farm Credit Administration shall conduct a study of the need for the establishment of a fund to be used—

(1) to insure institutions of the Farm Credit System against losses on loans made by such institutions; or

(2) for any other purpose that would—

(A) assist in stabilizing the financial condition of such System; and

(B) provide for the protection of the capital that borrowers of such loans have invested in such System.

(b) In conducting such study, the Governor shall—

(1) consider the advisability of using the revolving funds provided for under section 4.1 of the Farm Credit Act of 1971 (12 U.S.C. 2152) to provide initial capital for the fund referred to in subsection (a); and

(2) estimate the amount and level of future assessments levied on institutions of the Farm Credit System that would be necessary to ensure the long-term liquidity of such fund.

(c) Not later than 180 days after the date of enactment of this Act, the Farm Credit Administration shall submit a report containing the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(d) The Farm Credit Administration shall take no action under the provisions of the Farm Credit Act of 1971 that would result in the liquidation or merger of any Federal land bank association or production credit association unless such liquidation or merger was approved by the stockholders of the association prior to November 14, 1985, or after December 31, 1985. This subsection shall not be applicable to the Eighth Federal Farm Credit District (Omaha, Nebraska) except that, in the case of such district, no elections may be certified, no charters may be issued, and no associations may be liquidated, prior to December 20, 1985.

(e) Effective for the period from the date of enactment of this Act through December 31, 1985, no Federal land bank, Federal intermediate credit bank, Federal land bank association, or production credit association may (1) require any borrower to provide additional collateral for any loan made under the Farm Credit Act of 1971 if the repayment under the terms of such loan is not overdue, or (2) bring any legal action to foreclose on, or otherwise liquidate, any loan that is based on the failure of a borrower to provide additional collateral for such loan if the repayment of the loan was not overdue at the time such collateral was required.

TITLE II—COMMITTEE ON ARMED SERVICES

SEC. 201. LIMITATION ON AMOUNTS AVAILABLE FOR OBLIGATION FOR BASIC PAY AND FOR RETIRED PAY ACCRUAL CHARGE.

From amounts appropriated or otherwise available to the Department of Defense for military personnel accounts for fiscal year 1986, the total amount obligated from each such account for military basic pay and payments into the Department of Defense Military Retirement Fund pursuant to section 1466(a) of title 10, United States Code, may not exceed the following:

(1) For the Department of the Army—

(A) for payments from the appropriation account "Military Personnel, Army", $15,951,800,000;

(B) for payments from the appropriation account "Reserve Personnel, Army", $1,595,500,000; and

(C) for payments from the appropriation account "National Guard Personnel, Army", $2,503,600,000.

(2) For the Department of the Navy—

(A) for payments from the appropriation account "Military Personnel, Navy", $11,689,900,000;

(B) for payments from the appropriation account "Military Personnel, Marine Corps", $3,659,600,000;

(C) for payments from the appropriation account "Reserve Personnel, Navy", $939,300,000; and

(D) for payments from the appropriation account "Reserve Personnel, Marine Corps", $202,200,000.

(3) For the Department of the Air Force—

(A) for payments from the appropriation account "Military Personnel, Air Force", $13,533,500,000;

(B) for payments from the appropriation account "Reserve Personnel, Air Force", $437,300,000; and

(C) for payments from the appropriation account "National Guard Personnel, Air Force", $754,500,000.

SEC. 202. LEGISLATIVE PROPOSAL TO AMEND MILITARY RETIREMENT SYSTEM FOR NEW ENTRANTS.

(a) REQUIREMENT FOR SUBMISSION OF LEGISLATIVE PROPOSAL MAKING CHANGES IN MILITARY RETIREMENT SYSTEM.—(1) Not later than 10 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report (including draft legislation) proposing two separate sets of changes in the military nondisability retirement system.

(2)(A) Each of the sets of changes to be proposed in the report under paragraph (1) shall include changes which, if enacted, would result in reductions in the amount required to be paid by the Secretary of Defense into the Department of Defense Military Retirement Fund pursuant to section 1466(a) of title 10, United States Code, during fiscal year 1986 in a total amount that would enable the Department of Defense to remain within the limits on obligations for basic pay and payments into such Fund prescribed by section 201 solely through such reductions.

(B) One of the sets of changes to be proposed in such report shall consist only of changes in the military retirement system other than changes in the procedure for periodic cost-of-living adjustments in retired or retainer pay which, if enacted, would result in the required reductions.

(3) Structural changes in the military retirement system to be proposed by the Secretary of Defense in either set of changes proposed in the report under paragraph (1)—

(A) should apply only to individuals who initially become members of the Armed Forces after the effective date of such changes; and

(B) should, to the maximum extent possible and consistent with military requirements, encourage members who are eligible for retirement to remain on active duty beyond 20 years of service.

(4) At the same time the Secretary of Defense submits the report required by paragraph (1), the Secretary shall submit separate reports on the following:

(A) The anticipated effects that the changes proposed in the report under paragraph (1) would have on recruiting and retention in the Armed Forces.

(B) Proposals for additional changes in other elements of the military compensation system or in other military personnel programs, including changes in promotion and retention policies.

(C) A description of the changes in military retirement, compensation or personnel programs that would be necessary if the reductions resulting from the funding limitations set forth in section 201 were $1,800,000,000, $2,900,000,000, $3,600,000,000, $4,000,000,000, or $5,400,000,000, as well as an evaluation of the effects such changes would have on recruiting and retention in the Armed Forces.

(D) A plan that could be used to implement over a period of four or more years the changes proposed in the report under paragraph (1).

(b) SPECIFICATION OF ACTUARIAL METHODS AND ASSUMPTIONS FOR FY86 RETIREMENT LEGISLATION.—In determining the cost, or the amount to be saved, as the result of the en-

actment of any legislative proposal that would make changes in the military retirement system effective during fiscal year 1985 or 1986, the actuarial methods and assumptions used shall be the same as those approved by the Board of Actuaries (in accordance with section 1465(d) of title 10, United States Code) for use in calculating the military retirement accrual percentage for the President's budget for fiscal year 1986.

(c) RECALCULATION OF ACCRUAL PERCENTAGE UPON CHANGE IN BENEFITS.—(1) If a significant change in the military retirement system is enacted into law that takes effect during fiscal year 1985 or 1986, the accrual percentage shall be recalculated taking into account that change in law. Any such recalculation shall be made using the actuarial methods and assumptions described in subsection (b).

(2) In making determinations under section 1466(a) of title 10, United States Code, for months during fiscal years 1985 and 1986 beginning on or after the effective date of any such change in law, the accrual percentage as recalculated under paragraph (1) shall be used in lieu of the accrual percentage that would otherwise be applicable.

(d) DEFINITION OF ACCRUAL PERCENTAGE.—For purposes of this section, the term "accrual percentage" means the single level percentage of basic pay determined under section 1465(c)(1) of title 10, United States Code, for the purposes of computations under sections 1465(b) and 1466(a) of that title.

SEC. 203. COLLECTION BY THE UNITED STATES OF MEDICAL AND DENTAL COSTS INCURRED ON BEHALF OF CERTAIN PERSONS.

(a) IN GENERAL.—(1) Chapter 55 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1095. Collection from third-party payers of reasonable medical and dental care costs incurred on behalf of retirees and dependents

"(a)(1) In the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of this title, the United States shall have the right to collect from a third-party payer the reasonable costs of medical and dental care incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

"(2) A person covered by section 1074(b), 1076(a), or 1076(b) of this title may not be required to pay an additional amount to the United States for medical and dental care by reason of this section.

"(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care solely on the basis that such care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).

"(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided medical or dental care to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

"(d) Notwithstanding subsections (a) and (b), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

"(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

"(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

"(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of medical and dental care. Computation of such reasonable cost may be based on—

"(1) per diem rates; or

"(2) such other method as may be appropriate. However, such regulations shall provide that in no event may the reasonable cost of care or services sought to be recovered or collected from a third-party payer exceed an amount equal to the prevailing rate that such third-party payer can demonstrate to the satisfaction of the Secretary of Defense it would pay for the care or services provided in facilities (other than facilities of departments or agencies of the United States) in the same geographic area.

"(g) In this section, 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1095. Collection from third-party payers of reasonable medical and dental care costs incurred on behalf of retirees and dependents.".

(b) EFFECTIVE DATE.—Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to health care provided on or after the date of the enactment of this Act (but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after that date).

(c) REPEAL PROVISION.—Section 1095 of title 10, United States Code, as added by subsection (a)(1), and the item in the table of sections at the beginning of chapter 55 of such title relating to section 1095, as added by subsection (a)(2), are repealed effective two years after the date of the enactment of this Act.

SEC. 204. STUDY OF USE BY CHAMPUS OF MEDICARE PROSPECTIVE PAYMENT SYSTEM.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) costs of providing medical care under the program administered by the Department of Defense known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) have escalated rapidly in recent years;

(2) new and innovative methods for control and containment of costs under the CHAMPUS program must be explored; and

(3) the adoption for the CHAMPUS program of a prospective payment system for inpatient hospital services like that used by Department of Health and Human Services under title XVIII of the Social Security Act for the Medicare program could provide significant savings for the CHAMPUS program.

(b) STUDY REQUIREMENT.—The Secretary of Defense and the Secretary of Health and Human Services shall jointly study the possible effects of the adoption for the CHAMPUS program of a prospective payment system for inpatient hospital services such as that used by the Department of Health and Human Services for the Medicare program. The study shall address—

(1) the advisability and feasibility of requiring by law that a hospital participate in the CHAMPUS program as a condition of participating in Medicare and whether such a requirement is needed in order to ensure adequate participation by hospitals in the CHAMPUS program if a prospective payment system were to be adopted for the CHAMPUS program; and

(2) the changes that might be expected if such a system were adopted in the CHAMPUS patient workload and the CHAMPUS aggregate payment levels to various segments of the provider community (including private, public, nonprofit, and teaching facilities).

(c) REPORT.—Not later than December 1, 1985, the Secretaries shall submit a report to the Committees on Armed Services and Finance of the Senate and the Committees on Armed Services and Ways and Means of the House of Representatives of their findings under the study under subsection (b). The report shall include—

(1) such recommendations for changes in the CHAMPUS system of reimbursement as the Secretaries consider appropriate; and

(2) the recommendations of the Secretaries on the need for and appropriateness of a requirement by law relating to hospital participation in the CHAMPUS and Medicare programs such as that described in subsection (b)(1).

SEC. 205. REQUIREMENT FOR MEDICARE PROVIDERS OF HOSPITAL SERVICES TO PARTICIPATE IN CHAMPUS AND CHAMPVA PROGRAMS.

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), relating to agreements to provide care for the aged and disabled, is amended—

(1) by striking out "and" at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and"; and

(3) by inserting after subparagraph (H) the following new subparagraph:

"(I) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, United States Code, or section 613 of title 38, United States Code, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretaries of Defense, Health and Human Services, and Transportation in implementation of sections 1079 and 1086 of title 10, United States Code, and under regulations issued by the Administrator of Veterans' Affairs in implementation of section 613 of title 38, United States Code.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1986, and shall apply to inpatient admissions at hospitals subject to section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) (as amended by subsection (a) of this section) that occur on and after such date.

TITLE III—COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

TABLE OF SECTIONS

Sec. 301. Short title.
Sec. 302. Purchase of CDBG guaranteed obligations by the Federal Financing Bank.

Sec. 303. Public housing operating subsidies.
Sec. 304. Public and Indian housing financing reforms.
Sec. 305. Rural housing authorizations.
Sec. 306. Management of insured loans.
Sec. 307. Urban development action grants.

SHORT TITLE

SEC. 301. This title may be cited as the "Housing and Community Development Reconciliation Amendments of 1985".

PURCHASE OF CDBG GUARANTEED OBLIGATIONS BY THE FEDERAL FINANCING BANK

SEC. 302. (a) Section 108 of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following:

"(l) Notes or other obligations guaranteed under this section may not be purchased by the Federal Financing Bank.".

(b) The amendment made by subsection (a) shall take effect on July 1, 1986.

(c) The Secretary of Housing and Urban Development shall take such administrative actions as are necessary to provide by the effective date of subsection (a) private sector financing of loans guaranteed under section 108 of the Housing and Community Development Act of 1974.

PUBLIC HOUSING OPERATING SUBSIDIES

SEC. 303. Section 9(c) of such Act is amended by striking out "and by" after "1983," and by inserting after "1984" the following ", and not to exceed $1,279,000,000 on or after October 1, 1985".

PUBLIC AND INDIAN HOUSING FINANCING REFORMS

SEC. 304. (a) Section 4 of the United States Housing Act of 1937 is amended by adding at the end thereof the following new subsection:

"(c)(1) On September 30, 1985, or the date of enactment of the Housing and Community Development Reconciliation Amendments of 1985, whichever is later, in accordance with such accounting and other procedures as the Secretary may prescribe, each loan made by the Secretary pursuant to subsection (a) that has any principal amount outstanding or any interest amount outstanding or accrued shall be forgiven; the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled. This cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred. This paragraph shall not apply to any loan, the repayment of which was not to be made using annual contributions, or to any loan, all or part of the proceeds of which are due a public housing agency from contractors or others.

"(2) On September 30, 1985, or on the date of enactment of the Housing and Community Development Reconciliation Amendments of 1985 into law, whichever is later, each note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b), together with any promise to repay the principal and unpaid interest which has accrued on each obligation, is forgiven; and any other term or condition specified by each such obligation is canceled.

"(3) Nothing in paragraph (1) or (2) shall be construed to terminate the obligations of a public housing agency with respect to the management or operation of, or tenant eligibility for, units financed with the notes or obligations canceled earlier than such obligations would have terminated without such cancellation.".

RURAL HOUSING AUTHORIZATIONS

SEC. 305. (a) Section 513 of the Housing Act of 1949 is amended to read as follows:

"PROGRAM LEVELS AND AUTHORIZATIONS

"SEC. 513. (a)(1) The Secretary may insure and guarantee loans under this part during fiscal year 1986 in an aggregate amount not to exceed $2,027,180,000, of which—

"(A) $1,370,580,000 shall be for loans under section 502; and

"(B) $630,000,000 shall be for loans under section 515.

"(2) Notwithstanding any other provision of law, insured and guaranteed loan authority in this title for any fiscal year beginning after September 30, 1984, shall not be transferred or used for any purpose not specified in this part.

"(b) There are authorized to be appropriated for fiscal year 1986—

"(1) $13,000,000 for grants pursuant to section 504;

"(2) $1,000,000 for the purposes of section 509(o);

"(3) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 511 equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 503, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

"(4) $12,000,000 for financial assistance pursuant to section 516; and

"(5) $8,000,000 for the purposes of section 523.

"(c) The Secretary may enter into rental assistance contracts aggregating $240,200,000 under section 521(a)(2)(A) during fiscal year 1986.".

(b) Section 523(g) of the Housing Act of 1949 is amended—

(A) by striking out "$5,000,000" and inserting in lieu thereof "$700,000"; and

(B) by striking out "fiscal year 1985" and inserting in lieu thereof "fiscal year 1986".

MANAGEMENT OF INSURED LOANS

SEC. 306. (a) Section 517(d) of the Housing Act of 1949 is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following:

"(2) The Secretary shall, to the extent practicable, sell loans insured or guaranteed under this part to the public. Each loan made by the Secretary or other lender under this part that is insured in accordance with this subsection shall, when offered for sale to the public, be accompanied by an agreement by the Secretary to pay to the holder of such loan (through an agreement to purchase such loan or through such other means as the Secretary determines to be appropriate) the difference between the rate of interest paid by the borrower of such loan and the market rate of interest (as determined by the Secretary) on obligations having comparable periods to maturity on the date of such sale.

"(3) Each loan made by the Secretary or other lender under this part that is insured in accordance with this subsection shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provide that—

"(A) the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under this part;

"(B) upon any substantial default of the borrower, but prior to foreclosure, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and

"(C) following any assignment under subparagraph (B) and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under this part, including consideration for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

"(4) From the proceeds of loan sales under paragraph (2), the Secretary shall set aside as a reserve against future losses not less than .5 per centum of the outstanding face amount of the loans held by the public at any time.".

(b) Section 517(j) of the Housing Act of 1949 is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

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

"(6) to make payments and take other actions in accordance with agreements entered into under paragraphs (2) and (3) of subsection (d).".

(c) Section 517 of the Housing Act of 1949 is amended by striking out subsection (n).

URBAN DEVELOPMENT ACTION GRANTS

SEC. 307. (a) Section 119(a) of the Housing and Community Development Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out the provisions of this section not to exceed $440,000,000 for each of the fiscal years 1984 and 1985, not to exceed $352,000,000 for fiscal year 1986, and not to exceed $366,000,000 for fiscal year 1987. Any amount appropriated under the preceding sentence shall remain available until expended.".

(b)(1) Section 119(d) of the Housing and Community Development Act of 1974 is amended—

(A) by indenting clauses (A) and (B) of paragraph (1);

(B) by striking out "as the primary criterion," in clause (A);

(C) by striking out clause (C) of paragraph (1) and inserting in lieu thereof the following:

"(C) at least the following other criteria:

"(i) the extent to which the grant will stimulate economic recovery by leveraging private investment;

"(ii) the number of permanent jobs to be created and their relation to the amount of grant funds requested;

"(iii) the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed;

"(iv) the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested;

"(v) the extent to which State or local government funding or special economic incentives have been committed;

"(vi) the extent to which the project is located in the portion of the applicant city or urban county with the highest comparative degree of economic distress and the project will directly improve the quality of housing or employment opportunities for low and moderate income residents of that portion;

"(vii) the extent to which the project will produce goods or services the majority of which can be expected to be exported from the applicant's economy; and

"(viii) to the extent the Secretary deems appropriate, the extent to which other Federal assistance is to be made available shall be considered in applying the criteria referred to in clauses (i), (ii), and (iv) of this subparagraph;

"(D) additional consideration for the extent to which the project, in the determination of the Secretary, would—

"(i) retain jobs which would be lost without the provision of a grant under this section; and

"(ii) relieve the applicant's most pressing employment or residential needs by—

"(I) reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally,

"(II) retraining recently unemployed residents in new skills,

"(III) providing training to increase the local pool of skilled labor; or

"(IV) producing decent housing for low- and moderate-income persons in cases where such housing is in severe shortage in the applicant's area and where Federal assistance for production of such housing would not otherwise be available; and

"(E) additional consideration for projects with the following characteristics:

"(i) projects to be located within a city or urban county to which no grant under this section was made during the preceding twelve-month period; and

"(ii) twice the amount of the additional consideration provided under clause (i) in the case of a grant for projects to be located in cities or urban counties to which no grant under this section was made during the preceding twenty-four month period."; and

(D) by adding at the end thereof the following:

"(3) The Secretary may not award a grant under paragraph (1) unless he determines that the project would have a substantial impact on physical and economic development of the city or urban county, that the proposed activities are likely to be accomplished in a timely fashion within the grant amount available, and that the city or urban county has demonstrated performance in housing and community development programs.

"(4) The Secretary shall award points to each application as follows:

"(A) not more than 35 points on the basis of the factors referred to in subparagraph (A) of paragraph (1);

"(B) not more than 35 points on the basis of the factors referred to in subparagraph (B) of paragraph (1);

"(C) not more than 30 points on the basis of the factors referred to in subparagraph (C) of paragraph (1), of which not more than 3 points in the aggregate shall be awarded for the factors referred to in clauses (vi) and (vii) of subparagraph (C);

"(D) not more than 3 additional points as the Secretary deems appropriate for projects described in subparagraph (D) of paragraph (1); and

"(E) not more than 2 additional points as the Secretary deems appropriate for projects described in subparagraph (E) of paragraph (1).

"(5) The Secretary shall distribute grant funds under this section so that to the extent practicable during each funding cycle—

"(A) two-thirds of the funds are first made available utilizing all of the criteria set forth in paragraph (1); and

"(B) one-third of the funds is then made available solely on the basis of the factors referred to in subparagraphs (C), (D), and (E) of paragraph (1).".

(2) Notwithstanding any provision of section 119 of the Housing and Community Development Act of 1974, for purposes of funding decisions made before February 1, 1986, the Secretary of Housing and Urban Development shall give additional consideration, equal to the points otherwise awarded under clause (C) of paragraph (1) of section 119(d) of the Housing and Community Development Act of 1974, as amended by paragraph (1) of this subsection, in the case of a project to be located in a city or urban county to which no grant under section 119 of such Act was made during the preceding twenty-four month period if such project has met the criteria for preliminary approval in the three consecutive funding cycles immediately preceding the date of enactment of this paragraph.

(3) The provisions of paragraphs (1)(E), (4)(E), and (5) of section 119(d) of the Housing and Community Development Act of 1974, as amended by paragraph (1) of this subsection, and the provisions of paragraph (2) of this subsection shall take effect on the date of enactment of this Act, except that in applying section 119(d)(5)(B) of such Act prior to the issuance of implementing regulations under the second sentence of this paragraph, the Secretary shall exclude those criteria for which regulations are required to be issued. The remainder of the amendments made by paragraph (1) shall take effect upon the issuance of implementing regulations, which the Secretary shall issue not later than four months after the date of enactment of this Act.

(4) Not later than March 15, 1986, the Secretary of Housing and Urban Development shall prepare and submit to the Congress a report evaluating the Urban Development Action Grant standards for eligibility and project selection under section 119 of the Housing and Community Development Act of 1974. Such report shall include an evaluation of the effect of those standards, taken individually and as a whole, in targeting eligibility on the Nation's economically most distressed cities and in stimulating the maximum economic development activity, as well as any legislative recommendations of the Secretary for improvement and the reasons for such recommendations.

(c) Section 119(f) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following: "In any case where the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities which are or would be eligible activities under this section or section 104. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.".

(d) Section 119(n)(1) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following: "Such term also includes the counties of Kauai, Maui, and Hawaii in the State of Hawaii, except that in the case of such counties grants shall be made only to assist projects that, in the determination of the Secretary, are located in and will improve the employment base of urban areas within such counties.".

(e) Section 119(r) of the Housing and Community Development Act of 1974 is amended by striking out "among programs" and inserting in lieu thereof "against projects".

TITLE IV—COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

LOCAL RAIL SERVICE ASSISTANCE

SEC. 401. Notwithstanding any other provision of law, no appropriation shall be made for purposes of section 5 (f) through (p) of the Department of Transportation Act (49 App. U.S.C. 1654 (f) through (p)) which, for the fiscal year ending September 30, 1986, is in excess of $11,800,000; for the fiscal year ending September 30, 1987, is in excess of $12,200,000; and for the fiscal year ending September 30, 1988, is in excess of $12,800,000.

NATIONAL RAILROAD PASSENGER CORPORATION

SEC. 402. (a) Notwithstanding any other provision of law, no appropriation in excess of $582,000,000 for the fiscal year ending September 30, 1986, $606,100,000 for the fiscal year ending September 30, 1987, and $630,300,000 for the fiscal year ending September 30, 1988, shall be made for purposes of carrying out activities of the National Railroad Passenger Corporation under the Rail Passenger Service Act (45 U.S.C. 501 et seq.).

(b) Section 103(3) of the Rail Passenger Service Act (45 U.S.C. 502(3)) is amended—

(1) by inserting "used" immediately before "automobiles"; and

(2) by striking "and their occupants".

(c) Section 303(a)(1)(E) of the Rail Passenger Service Act (45 U.S.C. 543(a)(1)(E)) is amended by inserting "and shall serve until their successors have been appointed" immediately before the period at the end thereof.

(d) Section 303(d) of the Rail Passenger Service Act (45 U.S.C. 543(d)) is amended by striking the third sentence.

(e) Section 304(c) of the Rail Passenger Service Act (45 U.S.C. 544(c)) is amended by adding at the end thereof the following:

"(3) The preferred stock issued pursuant to paragraphs (1) and (2) of this subsection shall be deemed to have been issued as of the date of receipt by the Corporation of the funds for which such stock is issued.".

(f)(1) Section 305(l) of the Rail Passenger Service Act (45 U.S.C. 545(l)) is repealed.

(2) Section 305(m) of the Rail Passenger Service Act (45 U.S.C. 545(m)) is amended by striking "Center" each place it appears and inserting in lieu thereof "Corporation".

(3) Section 308(a) of the Rail Passenger Service Act (45 U.S.C. 548(a)) is amended to read as follows:

"(a) The Corporation shall submit to the Congress a report not later than February 15 of each year. The report shall include, for each route on which the Corporation operated intercity rail passenger service during the preceding fiscal year, data on ridership, short-term avoidable profit or loss per passenger mile, revenue-to-cost ratio, revenues, the Federal subsidy, the non-Federal subsidy, and on-time performance. Such report shall also specify significant operational problems which have been identified by the Corporation, together with proposals by the Corporation to resolve such problems.".

(g) Section 306(f) of the Rail Passenger Service Act (45 U.S.C. 546(f)) is amended by inserting at the end thereof the following: "The Corporation shall be permitted to participate in the contract air program administered by the General Services Administration in markets where service provided by the Corporation is competitive with regard to rates and total trip times.".

(h) Section 306(m) of the Rail Passenger Service Act (45 U.S.C. 546(m)) is amended by inserting "only" immediately after "citizen".

(i)(1) Section 403(d) of the Rail Passenger Service Act (45 U.S.C. 563(d)) is amended—

(A) by striking "criteria set forth in section 404(d)(2)(B)" and inserting in lieu thereof "criterion set forth in section 404(d)(2)"; and

(B) by inserting after the first sentence thereof the following: "Beginning October 1, 1986, if such service is not projected to meet such criterion, the Corporation may discontinue such service, unless the Corporation and a State (or States) enter into an agreement which ensures that the criterion will be met.".

(2) Section 404(c)(3)(B) of the Rail Passenger Service Act (45 U.S.C. 564(c)(3)(B)) is amended—

(A) by striking "60" and inserting in lieu thereof "120";

(B) by striking all after "submission" through "amendment"; and

(C) by adding at the end thereof the following: "For purposes of this subparagraph, continuity of session of the Congress is broken only by an adjournment sine die and the days on which either House is not in session because of adjournment of more than 3 days to a day certain are excluded in the computation of such 120-day period.".

(3) Section 404(c)(4)(B) of the Rail Passenger Service Act (45 U.S.C. 564(c)(4)(B)) is amended to read as follows:

"(B) The Corporation shall conduct an annual review of each route in the basic system to determine if such route is projected to meet the criterion appropriate to such route set forth in subsection (d), as adjusted to reflect constant 1979 dollars. If the Corporation determines on the basis of such review that such route will not meet such criterion, the Corporation shall discontinue, modify, or adjust the operation of rail passenger service over such route so that the criterion will be met.".

(4)(A) The first sentence of section 404(d)(1) of the Rail Passenger Service Act (45 U.S.C. 564(d)(1)) is amended—

(i) by striking "if—" and inserting in lieu thereof "if";

(ii) by striking "(A)"; and

(iii) by striking all after "mile" the second time it appears therein and inserting in lieu thereof a period.

(B) The second sentence of section 404(d)(1) of the Rail Passenger Service Act (45 U.S.C. 564(d)(1)) is amended by striking "and passenger mile per train mile".

(C) The last sentence of section 404(d)(1) of the Rail Passenger Service Act (45 U.S.C. 564(d)(1)) is repealed.

(5) Section 404(d)(2) of the Rail Passenger Service Act (45 U.S.C. 564(d)(2)) is amended—

(A) by striking "if—" and inserting in lieu thereof "if";

(B) by striking "(A)"; and

(C) by striking all after "mile" the second time it appears therein and inserting in lieu thereof a period.

(6) Section 402 of the Rail Passenger Service Act (45 U.S.C. 562) is amended by adding at the end thereof the following:

"(i) Nothing in this section shall preclude parties from entering into an agreement, after the determination of the Commission or their initial agreement under this section, with respect to related costs described in this section.".

(7) The provisions of this subsection shall take effect on October 1, 1986.

(j) Title VII of the Rail Passenger Service Act (45 U.S.C. 621 et seq.) is repealed.

(k) Section 306(a)(3) of the Rail Passenger Service Act (45 U.S.C. 546(a)(3)) is amended by striking ", except as otherwise provided in this Act,".

(l) Section 306(k) of the Rail Passenger Service Act (45 U.S.C. 546(k)) is repealed.

(m) Section 402(g) of the Rail Passenger Service Act (45 U.S.C. 562(g)) is repealed.

(n) Section 405(a) of the Rail Passenger Service Act (45 U.S.C. 565(a)) is amended by adding at the end thereof the following: "For purposes of this section and any agreement designed to implement the provisions of this section, a 'discontinuance of intercity rail passenger service' shall not include any reduction in frequency, seasonal suspension or other service modification that does not result in elimination of all intercity rail passenger service on a route.".

(o)(1) The first sentence of section 805(2)(A) of the Rail Passenger Service Act (45 U.S.C. 644(2)(A)) is amended—

(A) by striking "shall" and inserting in lieu thereof "may"; and

(B) by striking "annually a".

(2) Section 805(2) (A) and (B) of the Rail Passenger Service Act (45 U.S.C. 644(2) (A) and (B)) is amended by striking "audit" wherever it appears and inserting in lieu thereof "audits".

(p) Section 806 of the Rail Passenger Service Act (45 U.S.C. 645) is repealed.

(q) Section 810 of the Rail Passenger Service Act (45 U.S.C. 649) is repealed.

(r) Section 811 of the Rail Passenger Service Act (45 U.S.C. 650) is repealed.

(s) Section 703(1)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(D)) is repealed.

(t)(1)(A) Section 1163 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111) is repealed.

(B) The item relating to section 1163 in the table of contents of the Northeast Rail Service act of 1981 is amended to read as follows:

"Sec. 1163. Repealed.".

(C) Any decisions of the Interstate Commerce Commission before the date of enactment of this Act under section 1163 of the Northeast Rail Service Act (45 U.S.C. 1111) shall have no force and effect after the date of enactment of this Act.

(2) Section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)) is amended—

(A) by inserting "(1)" immediately after "(a)";

(B) by inserting "(2)" immediately before "Notwithstanding"; and

(C) by adding at the end of paragraph (2), as so designated by subparagraph (A) of this paragraph, the following: "The Commission, in making such a determination, shall assign to an entity obtaining services pursuant to this paragraph the costs incurred by the Corporation solely for the benefit of that entity, plus a proportionate share of all other costs of providing services covered by this paragraph that are incurred for the common benefit of more than one user of the rail properties covered by this paragraph. The proportionate share of such other costs assigned to a user shall be based on relative measures of volume of car or train operations, passengers handled, tonnage, or other factors that reasonably reflect the relative use of the rail properties covered by this paragraph.".

(3) The compensation standard established by the amendment made by paragraph (2) of this subsection shall be effective in any proceeding instituted under section 402(a)(2) of the Rail Passenger Service Act (45 U.S.C. 562(a)(2)) after the date of enactment of this Act.

CORPORATION FOR PUBLIC BROADCASTING

SEC. 403. (a) Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking "and" after "1983,"; and

(2) by inserting ", $24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, and $32,000,000 for fiscal year 1988," immediately after "1984,".

(b) Section 393 of the Communications Act of 1934 (47 U.S.C. 393) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(c)(1) Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(A) by striking "and 1986" and inserting in lieu thereof "1986, 1987, 1988, 1989, and 1990";

(B) by striking "and" after "fiscal year 1985,"; and

(C) by inserting ", $200,000,000 for fiscal year 1987, $214,000,000 for fiscal year 1988, $238,000,000 for fiscal year 1989, and $254,000,000 for fiscal year 1990" immediately before the period at the end thereof.

(2) Section 396(k)(3)(A)(i)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)(II) is amended by striking "research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness,".

(d) Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended—

(1) by striking paragraph (8); and

(2) by redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively.

FEDERAL COMMUNICATIONS COMMISSION

SEC. 404. (a)(1) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $98,100,000 for fiscal year 1986 and $97,600,000 for fiscal year 1987, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1986 and 1987.".

(2) The amendment made by paragraph (1) of this subsection shall apply with respect to fiscal years beginning after September 30, 1985.

(b) Section 4(g)(2) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)) is amended—

(1) in subparagraph (D), by striking "1985" and inserting in lieu thereof "1987"; and

(2) by adding at the end thereof the following new subparagraph:

"(E) Funds which are received by the Commission as reimbursements under the provisions of this paragraph after the close of a fiscal year shall remain available for obligation.".

(c) Section 5(g) of the Communications Act of 1934 (47 U.S.C. 155(g)) is amended by striking "January 31" and inserting in lieu thereof "March 31".

(d) For provisions of law which, through relocation of the Fort Lauderdale, Florida, Monitoring Station of the Federal Communications Commission, reduce spending for fiscal year 1986 in satisfaction of the reconciliation requirements imposed by section 2(e) of S. Con. Res. 32 (99th Congress), see the material under the heading "FEDERAL COMMUNICATIONS COMMISSION" in the Supplemental Appropriations Act, 1985 (Public Law 99-88).

(e) The Communications Act of 1934 (47 U.S.C. 151 et. seq.) is amended by inserting immediately after section 7 the following new section:

"CHARGES

"SEC. 8. (a) The Commission shall assess and collect charges listed in this subsection at the rates listed or at such modified rates as it shall establish pursuant to the provisions of subsection (b) of this section.

"Schedule of Charges

"Service	Fee amount
PRIVATE RADIO BUREAU	
1. Marine Coast Stations (New, Modifications, Renewals).	$60.00
2. Operational Fixed Microwave Stations (New, Modifications, Renewals).	135.00

"Schedule of Charges—Continued

"Service	Fee amount
3. Aviation (Ground Stations) (New, Modifications, Renewals).	60.00
4. Land Mobile Radio Licenses (New, Modifications, Renewals).	30.00
EQUIPMENT APPROVAL SERVICE	
1. Certification	
a. Receivers (Except TV & FM Receivers).	250.00
b. All Other Devices	650.00
2. Type Acceptance	
a. Approval of Subscription TV Systems.	2,000.00
b. All Others	325.00
3. Type Approval	
a. Ship (Radio Telegraph) Automatic Alarm Systems.	6,500.00
b. Ship and Lifeboat (Radio Telegraph) Transmitters.	3,250.00
c. All Others (With Testing)	1,300.00
d. All Others (Without Testing)	150.00
4. Notifications	100.00
MASS MEDIA BUREAU	
1. Commercial TV Stations	
a. New and Major Change Construction Permits Application Fees.	2,250.00
b. Minor Changes Application Fee.	500.00
c. Hearing Charge	6,000.00
d. License Fee	150.00
2. Commercial Radio Stations	
a. New and Major Change Construction Permits.	
(1) Application Fee AM Station.	2,000.00
(2) Application Fee FM Station.	1,800.00
b. Minor Changes Appl. Fee-AM & FM.	500.00
c. Hearing Charge	6,000.00
d. License Fee	
(1) AM	325.00
(2) FM	100.00
e. Directional Antenna License Fee (AM only).	375.00
3. FM/TV Translators and LPTV Stations (New & Major Change Construction Permits)	
a. Application Fee	375.00
b. License Fee	75.00
4. Station Assignment and Transfer Fees	
a. AM, FM and TV Commercial Stations	
(1) Application Fee (Forms 314/315).	500.00
(2) Application Fee (Form 316).	70.00
b. FM/TV Translators & LPTV Stations.	75.00
5. Auxiliary Services Major Actions—Application Fee.	75.00
6. Renewals—All Services	30.00
7. Cable Television Service	
a. Cable Television Relay Service—Construction Permits, Assignments & Transfers, Renewals & Modifications.	135.00
b. Cable Special Relief Petitions—Filing Fee.	700.00
8. Direct Broadcast Satellite New & Major Change CPs	
a. Application for Authorization to Construct a Direct Broadcast Satellite.	1,800.00
b. Issuance of CP & Launch Authority.	17,500.00
c. License to Operate Satellite	500.00
d. Hearing Charge	6,000.00
COMMON CARRIER BUREAU	
1. Domestic Public Land Mobile Stations (Base, Dispatch, Control & Repeater Stations)	
a. New or Additional Facility Authorizations, Assignments & Transfers (Per transmitter/per station).	200.00
b. Renewals and Minor Modifications (Per station).	20.00
c. Air-Ground Individual License Renewals & Modifications.	20.00
2. Cellular Systems	
a. Initial Construction Permits & Major Modification Applications (Per cellular systems).	200.00
b. Assignments & Transfers (Per station).	200.00
c. Initial covering license (Per cellular system)	
(1) Wireline carrier	525.00
(2) Nonwireline carrier	50.00
d. Renewals	20.00
e. Minor modifications and additional licenses.	50.00
3. Rural Radio (Central Office, Interoffice or Relay Facilities)	
a. Initial Construction Permit, Assignments & Transfers (Per transmitter).	90.00
b. Renewals & Modifications (Per station).	20.00
4. Offshore Radio Service	
a. Initial Construction Permit, Assignments & Transfers (Per transmitter).	90.00
b. Renewals & Modifications (Per station).	20.00
5. Local Television or Point To Point Microwave Radio Service	
a. Construction Permits, Modifications of Construction Permits, and Renewals of Licenses.	135.00
b. Assignments & Transfers of Control (Per Station).	45.00
c. Initial License for New Frequency.	135.00
6. International Fixed Public Radio (Public & Control Stations)	
a. Initial Construction Permits, Assignments & Transfers.	450.00
b. Renewals & Modifications	325.00
7. Satellite Services	
a. Transmit Earth Stations	
(1) Initial Station Authorization.	1,350.00
(2) Assignments & Transfers of Station Authorizations.	450.00
(3) All Other Applications	90.00
b. Small Transmit/Receive Earth Stations (2 meters or less)	
(1) Lead Authorization	3,000.00
(2) Routine Authorization	30.00
(3) All Other Applications	90.00
c. Receive Only Earth Stations	
(1) Initial Station Authorization.	200.00
(2) All Other Applications	90.00
d. Applications For Authority To Construct a Space Station.	1,800.00
e. Applications For Authority To Launch & Operate a Space Station.	18,000.00
f. Satellite System Application	
(1) Initial Station Authorization.	5,000.00
(2) Assignments & Transfers of Systems.	1,333.00
(3) All Other Applications	90.00
8. Multipoint Distribution Service	
a. Construction Permits, Renewals & Modifications of Construction Permits.	135.00
b. Assignments & Transfers of Control (Per Station).	45.00
c. Initial License (per channel)	400.00
9. Section 214 Applications	
a. Applications for Overseas Cable Construction.	8,100.00
b. Applications for Domestic Cable Construction.	540.00
c. All Other 214 Applications	540.00
10. Tariff Filings	
a. Filing Fee	250.00
b. Special Permission Filings	200.00
11. Telephone Equipment Registration	135.00
12. Digital Electronic Message Service	
a. Construction Permits, Renewals & Modifications of Construction Permits.	135.00
b. Assignments & Transfers of Control (Per Station).	45.00
c. Initial License (First License or License Adding a New Frequency).	135.00

"Schedule of Charges—Continued

The Schedule of Charges established by this subsection shall be implemented not later than 360 days after the date of enactment of this subsection.

"(b)(1) The Schedule of Charges established by this section shall be reviewed by the Commission every two years after the date of enactment of this section and adjusted by the Commission to reflect changes in the Consumer Price Index. Increases or decreases in charges shall apply to all categories of charges, except that individual fees shall not be adjusted until the increase or decrease, as determined by the net change in the Consumer Price Index since the date of enactment of this section, amounts to at least $5.00 in the case of fees under $100.00, or 5 percent in the case of fees of $100.00 or more. All fees which require adjustment will be rounded upward to the next $5.00 increment. The Commission shall transmit to the Congress notification of any such adjustment not later than 90 days before the effective date of such adjustment.

"(2) Increases or decreases in charges made pursuant to this subsection shall not be subject to judicial review.

"(c)(1) The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of charges required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the charge which was not paid in a timely manner.

"(2) The Commission may dismiss any application or other filing for failure to pay in a timely manner any charge or penalty under this section.

"(d)(1) The charges established in this section shall not be applicable to the following radio services: Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency Radio, or to governmental entities licensed in other services.

"(2) The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest.

"(e) Moneys received from charges established in or prescribed pursuant to this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions under this Act.

"(f) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.".

CONSTRUCTION-DIFFERENTIAL SUBSIDY

SEC. 405. For provisions of law which, through repayment of construction-differential subsidies made for the purpose of assisting the construction of certain new vessels, reduce spending for fiscal year 1986 in an amount not to exceed $200,000,000 in satisfaction of the reconciliation requirements imposed by section 2(e) of S. Con. Res. 32 (99th Congress), see sections 204(b), 207, 506 and 714 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1114(b), 1117, 1156 and 1204, respectively), and regulations promulgated pursuant to such sections.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SEC. 406. (a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its executive direction and administration duties under law, $47,954,000 for fiscal year 1986 and $50,111,930 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to executive direction and administration specified by the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857-1 et seq.), and any other law involving such duties. Such duties include management, administrative support, retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development.

(b) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its marine services duties under law, $64,886,000 for fiscal year 1986 and

$67,805,870 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to marine services specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include ship operations, maintenance, and support.

(c) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its aircraft services duties under law, $12,744,000 for fiscal year 1986 and $13,317,480 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to aircraft services specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), and any other law involving such duties. Such duties include aircraft operations, maintenance, and support.

(d) For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under the National Advisory Committee on Oceans and Atmosphere Act of 1977 (33 U.S.C. 857-13 et seq.), there are authorized to be appropriated to the Department of Commerce $630,000 for fiscal year 1986 and $658,350 for fiscal year 1987.

(e) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its programs at current levels such sums as may be necessary to accommodate salary, pay, and other employee benefits authorized by law for fiscal years 1986 and 1987.

(f) For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), there are authorized to be appropriated to the Department of Commerce $10,635,000 for fiscal year 1986 and $11,113,575 for fiscal year 1987.

(g) For the purpose of enabling the National Oceanic and Atmospheric Administration to carry out its duties under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), there are authorized to be appropriated to the Department of Commerce $3,571,000 for fiscal year 1986 and $3,731,695 for fiscal year 1987.

(h)(1) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its nonliving marine resource duties under law, $2,000,000 for fiscal year 1986 and $2,090,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to nonliving marine resources specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include research, development, and licensing responsibilities pertaining to ocean thermal energy conversion and the seabed mining of manganese nodules, and polymetallic sulfide analyses and research.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to moneys authorized under the Deep Seabed Hard Minerals Resources Act (30 U.S.C. 1401 et seq.), and the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), for the purpose of carrying out such duties relating to nonliving marine resources.

(i)(1) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its ocean research duties under law, $28,471,000 for fiscal year 1986 and $29,752,195 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to ocean research specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include undersea marine resources, air-sea interaction, and ocean and Great Lakes environmental research.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to ocean research moneys authorized under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) for the purpose of carrying out such duties relating to ocean research.

(j)(1) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its ocean service duties under law, $20,314,000 for fiscal year 1986 and $21,228,130 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to ocean services specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include coordination of interagency research in ocean dumping and marine pollution, and provision of tide and current data for the safe and efficient use of the oceans and Great Lakes by government, commerce, and the private sector.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to moneys authorized under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), for the purpose of carrying out such duties relating to ocean services.

(k)(1) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its mapping, charting, and geodesy duties under law, $50,474,000 for fiscal year 1986 and $52,745,330 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to mapping, charting, and geodesy specified by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such duties. Such duties include aeronautical and nautical mapping and charting activities, and geodetic data collection and analysis.

(2) Section 1307 of title 44, United States Code, is amended to read as follows:

"§ 1307. National Oceanic and Atmospheric Administration: charts, sale and distribution

"(a)(1) All aeronautical and nautical charts, tide and tidal current tables, tidal current charts, coast pilots, water level products and associated data bases (nautical and aeronautical products) created or published by the National Oceanic and Atmospheric Administration shall be sold at such prices as the Secretary of Commerce shall establish annually, in accordance with the provisions of this subsection. The Secretary shall publish annually the prices at which nautical and aeronautical products are sold to the public.

"(2)(A) Subject to subparagraph (B) of this paragraph, the prices of nautical and aeronautical products may be increased over a period of not less than three years after the date of enactment of this section so as to recover all costs attributable to data base management, compilation, printing, and distribution of such products. The prices of such products may be maintained to recover all such costs thereafter. At the end of such period and every three years thereafter, the Secretary shall report to the Congress on the effect of imposing or maintaining such increased prices, including any impact on air and marine safety.

"(B) The Secretary shall adjust the prices of nautical or aeronautical products in such manner as is necessary to avoid any adverse impact on air and marine safety attributable to the prices specified in subparagraph (A) of this paragraph.

"(3) This section shall not be construed to require the establishment of any price for a nautical or aeronautical product where, in the judgment of the Secretary, furnishing of that product to a recipient is a reasonable exchange for voluntary contribution of information by the recipient to a program of the National Oceanic and Atmospheric Administration.

"(b) Fees collected from the sale of nautical or aeronautical products under this section and from any licensing of such products which is permitted under any other provision of law shall be deposited in the miscellaneous receipts fund of the United States Treasury.

"(c) The Secretary may distribute nautical and aeronautical products—

"(1) without charge to each foreign government or international organization with which the Secretary or a Federal department or agency has an agreement for exchange of these products without cost; and

"(2) at prices which the Secretary establishes, to the departments and officers of the United States requiring them for official use.

"(d) The fees provided for in this section are for the purpose of reimbursing the United States Government for the costs of creating, publishing or distributing aeronautical and nautical products of the National Oceanic and Atmospheric Administration. The collection of fees authorized by this section shall not alter or expand any duty or liability of the United States under existing law for the performance of functions for which fees are collected, nor shall the collection of fees constitute an express or implied undertaking by the United States to perform any activity in a certain manner.".

(3) The item relating to section 1307 in the analysis of chapter 13 of title 44, United States Code, is amended to read as follows:

"1307. National Oceanic and Atmospheric Administration: charts, sale and distribution.".

MARITIME PROGRAMS

SEC. 407. (a) Funds are authorized to be appropriated without fiscal year limitation as the appropriation Act may provide for the use of the Department of Transportation for fiscal year 1986 as follows:

(1) for payment of obligations incurred for operating-differential subsidy, not to exceed $335,084,000;

(2) for expenses necessary for research and development activities, not to exceed $9,900,000; and

(3) for expenses necessary for operations and training activities, not to exceed $71,967,000, including not to exceed—

(A) $34,847,000 for maritime education and training expenses, including not to exceed $19,633,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $10,915,000 for financial assistance to State maritime academies, $3,000,000 for fuel oil assistance to State maritime academy training vessels, and $1,299,000 for expenses necessary for additional training;

(B) $9,277,000 for national security support capabilities, including not to exceed $7,932,000 for reserve fleet expenses, and $1,345,000 for emergency planning/operations; and

(C) $27,843,000 for other operations and training expenses.

(b) Funds are authorized to be appropriated for the use of the Federal Maritime Commission, in the amount of $11,940,000 for fiscal year 1986.

(c) Section 2342(3) of title 28, United States Code, is amended to read as follows:

"(3) all final orders of the Federal Maritime Commission entered under title 46, United States Code;".

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

SEC. 408. Section 304 of the International Travel Act of 1961 (22 U.S.C. 2126) is amended by inserting immediately after "1982" the following: ", not to exceed $12,000,000 for the fiscal year ending September 30, 1986, not to exceed $13,000,000 for the fiscal year ending September 30, 1987, and not to exceed $14,000,000 for the fiscal year ending September 30, 1988".

TITLE V—COMMITTEE ON ENERGY AND NATURAL RESOURCES

Subtitle A—Department of Energy Programs

PART 1—STRATEGIC PETROLEUM RESERVE

AUTHORIZATIONS OF APPROPRIATIONS FOR FISCAL YEARS 1986, 1987, AND 1988

SEC. 501. Funds are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve—

(1) to carry out part B of title I of the Energy Policy and Conservation Act, except acquisition, transportation, and injection of petroleum products for the Reserve and the carrying out of any drawdown and distribution of the Reserve—

(A) for the fiscal year ending September 30, 1986, $135,912,000;

(B) for the fiscal year ending September 30, 1987, $358,996,000; and

(C) for the fiscal year ending September 30, 1988, $156,692,000; and

(2) for the acquisition, transportation, and injection of petroleum products for the Reserve and the carrying out of any drawdown and distribution of the Reserve—

(A) for the fiscal year ending September 30, 1986, $357,548,000;

(B) for the fiscal year ending September 30, 1987, $333,695,000; and

(C) for the fiscal year ending September 30, 1988, $357,454,000.

CONFORMING AMENDMENTS

SEC. 502. (a) Section 160(c) of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6240), is amended by adding the following new paragraph as follows:

"(3) Notwithstanding paragraph (2), during each of fiscal years 1986, 1987 and 1988, the President shall immediately seek to undertake, and thereafter continue, petroleum acquisition, transportation, and injection activities at a level sufficient to assure a minimum average annual fill-rate of 35,000 barrels per day.".

(b) Section 160(d)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6240), is amended by—

(1) replacing the period with a semicolon and the word "or" and adding the following new subparagraph:

"(D) for each of the fiscal years 1986, 1987 and 1988, acquisition, transportation, and injection activities for the Strategic Petroleum Reserve are being undertaken for that fiscal year at a level sufficient to assure that petroleum products in storage in the Strategic Petroleum Reserve will be increased at an average annual rate of at least 35,000 barrels per day for that fiscal year.".

PART 2—URANIUM ENRICHMENT PROGRAM

AUTHORIZATION OF APPROPRIATIONS

SEC. 521. (a) In accordance with section 660 of the Department of Energy Organization Act (42 U.S.C. 7270), there is authorized to be appropriated to the Department of Energy for each of fiscal years 1986, 1987, and 1988 to carry out uranium enrichment activities amounts equal to the revenues to be received during each such fiscal year by the Department of Energy in providing uranium and enrichment service activities, as estimated in the applicable budget submitted by the President to the Congress for such fiscal year.

(b) In partial repayment of amounts appropriated from the general fund of the Treasury of the United States for uranium enrichment service activities, the Secretary of Energy shall deposit in the general fund any revenues in excess of expenditures in the provision of such activities over the three-year period referred to in subsection (a).

URANIUM ENRICHMENT REPORT

SEC. 522. The Secretary of Energy shall report within 60 days after the date of the enactment of this section to the Committee on Energy and Natural Resources of the Senate and the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives regarding the effects of the September 19, 1985 decision of the U.S. District Court for the District of Colorado holding that the Department's Utility Services Uranium Enrichment Contracts are null and void (Western Nuclear Inc. v. F. Clark Huffman, Civil No. 84-C-2315). To the extent that it would not compromise the appeals process or DOE's competitive position in uranium enrichment, the report shall identify what the effects, if any, of the decision will be (1) on the operation of the Department's uranium enrichment facilities, (2) on the revenues of the uranium enrichment program, and (3) how the Department's response may mitigate these effects.

PART 3—ENERGY CONSERVATION

SEC. 523. This Part may be cited as the "Federal Energy Cost Reduction Act of 1985."

SEC. 524. Part 3 of title V of the National Energy Conservation Policy Act (P.L. 95-619) is amended by adding a new section after section 551 to read as follows:

"SEC. 552. ENERGY SAVINGS CONTRACTS.

"(a) Notwithstanding any other law, the head of a Federal agency may contract for energy savings for periods of not more than 25 years. As used in this section "energy savings" means a reduction in the energy consumption or in energy-related costs of an existing building or community of buildings caused by new equipment or supplies, altered operation and maintenance, technical services, or other means or the increased efficient use of existing energy sources by cogeneration, heat recovery, or other means.

"(b) The costs of contracts authorized under this section for any year may be paid from moneys made available for utility costs and related operations and maintenance costs.

"(c) In the event funds are not made available for the continuance of a contract authorized by this section for a subsequent fiscal year, the contract shall be cancelled or terminated and the costs of cancellation or termination may be paid from—

"(1) funds appropriated for the performance of the contract concerned;

"(2) appropriated funds otherwise available for the payment of those costs; or

"(3) funds appropriated for those costs.

"(d) The Secretary's annual report under section 550 and the information each Federal agency is required to furnish to the Secretary under section 550 shall include:

"(1) a description of the progress made in conforming to this section the regulations applicable to each Federal agency so as to permit contracts for energy savings, and

"(2) a description of each Federal agency's progress in the use of such contracts.".

Subtitle B—Department of the Interior Programs

SHORT TITLE

SEC. 531. This subtitle may be referred to as the "Outer Continental Shelf Lands Act Amendments of 1985".

REVISION OF SECTION 8(g)

SEC. 532. Delete paragraphs 8(g)(2) through (4) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(g)) and insert in lieu thereof—

"(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties derived from any lease of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary of any coastal State. Except as provided in paragraph (5), not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the United States Treasury.

"(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenues received by the United States under such an agreement shall be subject to the requirements of paragraph (2).

"(4) The deposits in the Treasury account described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates

as determined by the Secretary of the Treasury.

"(5)(A) When there is a boundary dispute between the United States and a State under section 7 of this Act, the Secretary shall credit to the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 revenues from oil and gas lease sales in the area within three nautical miles of the boundary asserted by the State, if that money has not otherwise been deposited in the separate account established under section 7. Proceeds of the account established under section 7, and the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed as follows:

"(i) If a State is wholly successful in its claim under section 7, such claim shall be satisfied by the money deposited in the escrow account established by section 7. Any excess monies in the section 7 account attributable to such State shall be transferred to the 8(g) account, and any monies due that State, both retrospectively and prospectively, as a result of the 8(g) zone created by the newly established boundary shall be distributed to the State in accordance with the terms of section 533 of the Outer Continental Shelf Lands Act Amendments of 1985.

"(ii) If the United States is wholly successful in its claim under section 7, the amount of money that is necessary to satisfy the State's share as set forth under section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed from the revenues deposited in the section 7 escrow account. The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(iii) If the United States or the affected State is partially successful in its claim under section 7, after the distribution under that result, the amount of money that is necessary to satisfy the State as set forth under section 533 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed first from the remaining monies in the section 7 escrow account, and then from the amounts deposited or credited in the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985. For amounts credited, the distribution shall be inaccordance with clause (iv). The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(iv) If there is insufficient money from the applicable oil and gas lease sales deposited in either the account established by section 7 or the account referred to in section 533 of the Outer Continental Shelf Lands Act Amendments of 1985, the recoupment provisions of section 535 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be applicable.

"(B) This paragraph applies to all Federal oil and gas lease sales, under this Act, including joint lease sales, occurring after September 18, 1978.

"(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the States' shares described in paragraph (2).

"(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.".

DISTRIBUTION OF 8(g) ACCOUNT

SEC. 533. (a) Prior to January 1, 1986, the Secretary shall distribute to the designated coastal States the sum of—

(1) The amounts due and payable to each such State under paragraph (2) of section 8(g) of the Outer Continental Shelf Lands Act, as amended by this Act, for the period between October 1, 1985, and the date of such distribution, and

(2) The amounts due each such State under subsection (b) for the period prior to October 1, 1985.

(b)(1) The funds which were deposited in the separate account in the Treasury of the United States under section 8(g)(4) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(g)(4)), as it was in effect prior to the date of enactment of Section 532 of this Act shall be distributed in the following manner as a fair and equitable disposition of such funds derived from bonuses and rents and accrued interest thereon through September 30, 1985:

State	(In millions of dollars)
Louisiana	635
Texas	424
California	375
Alabama	73
Alaska	46
Mississippi	15
Florida	0.03

(2) The Secretary shall distribute to each coastal State 27 percent of the royalties derived from any lease of Federal lands within three miles of the seaward boundary of such coastal State and accrued interest thereon which have been deposited through September 30, 1985, in the separate account described in paragraph (1), as a fair and equitable disposition of such royalties.

(3) The amounts derived from bonuses, rents and royalties and accrued interest thereon through September 30, 1985, remaining in the account after distribution to the States under this subsection shall be transmitted to the miscellaneous receipts account of the United States Treasury.

(c) The acceptance of payment under this section shall satisfy and release any and all claims against the United States arising under, or related to, section 8(g) of the Outer Continental Shelf Lands Act, as amended, as it was in effect prior to the date of enactment of Section 532 of this Act.

IMMOBILIZATION OF BOUNDARIES

SEC. 534. Section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)) is amended by inserting before the semicolon at the end of the subsection add a comma and the following: "except that any boundary between a State and the United States under this Act which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory.".

RECOUPMENT

SEC. 535. (a) As a fair and equitable disposition of revenues derived between September 18, 1978, and September 30, 1985, from all bonuses, rents, and royalties from any Federal leases within three miles of the seaward boundary of any coastal State, including all such revenues which should have been, but which were not, deposited in the separate account in the Treasury of the United States under section 8(g)(4) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(g)(4)) as it was in effect prior to the date of enactment of section 532 of this Act, such coastal State shall be entitled to an additional amount equal to:

(1) 27 percent of the bonuses, rents, and royalties derived from any lease of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary of such coastal State, less

(2) The amounts paid to such coastal State under section 533(b) of this Act.

(b) The additional amount due each State under subsection (a) shall be paid from a separate Treasury account which is constituted as set forth in subsection (c). The total amount contained in such account on the last business day of each month shall be paid to each State in an amount proportional to that State's share of the total additional amounts due to all States under subsection (a).

(c) Beginning on October 1, 1986, the Secretary shall deposit into the account described in subsection (b) from the separate account described in section 8(g)(2) of the Outer Continental Shelf Lands Act, as amended by this Act, 18 percent of all bonuses, rents, and royalties deposited after October 1, 1986, into the account described in such section 8(g)(2) until such time as the additional amounts due to all coastal States under subsection (a) have been paid.

BIOMASS ENERGY AND ALCOHOL FUELS LOAN GUARANTEES

SEC. 536. Section 221 of the Biomass Energy and Alcohol Fuels Act of 1980 (Public Law 96-294; 42 U.S.C. 8821) is amended by—

(1) striking out "September 30, 1984" and inserting in lieu thereof "June 30, 1986"; and

(2) adding at the end thereof the following: "The Secretary may modify the terms and conditions of any conditional commitment for a loan guarantee under this subtitle made before October 1, 1984, including the amount of the loan guarantee. Enactment of this section shall not be in interpreted as indicating Congressional approval with respect to any pending conditional commitments under this Act.".

TITLE VI—COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OBLIGATION LIMITATION

SEC. 601. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed $12,750,000,000 for fiscal year 1986, $13,250,000,000 for fiscal year 1987, and $13,800,000,000 for fiscal year 1988. These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, obligations under section 157 of title 23, United States Code, projects covered under section 147 of the Surface Transportation Assistance Act of 1978, section 9 of the Federal-Aid Highway Act of 1981, section 118 of the National Visitors Center Facilities Act of 1968, or section 320 of title 23, United States Code.

(b) For the fiscal years 1986, 1987, and 1988, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal years bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal years.

(c) During the period October 1 through December 31, 1985, October 1 through December 31, 1986, and October 1 through December 31, 1987, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b) for fiscal years 1986, 1987 and 1988 respectively, and the total of all State obligations during

such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(d) Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after August 1, 1986, August 1, 1987, and August 1, 1988, revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses and Federal lands highways.

INCREASE THE STATE EMERGENCY REPAIR FUND LIMITATION

SEC. 602. The first sentence of section 125(b) of title 32, United States Code, is amended by inserting after "$30,000,000" the following: "($55,000,000 for projects in connection with disasters or failures occurring in calender year 1985)".

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(a) APPLICABLE PERCENTAGE INCREASE.—Section 1886(b)(3)(B) of the Social Security Act is amended to read as follows:
"(B)(i) For purposes of subparagraph (A) and subsection (d), the 'applicable percentage increase' for any 12-month cost reporting period or fiscal year shall be—
"(I) 0.5 percent with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986;
"(II) a percentage determined by the Secretary pursuant to subsection (e)(4), but which does not exceed the 'market basket percentage increase', with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1986, and before October 1, 1988; and
"(III) the percentage determined by the Secretary pursuant to subsection (e)(4) with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1988.
"(ii) For purposes of clause (i), the term 'market basket percentage increase' means the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.".
(b) CONFORMING AMENDMENTS.—(1) Section 1886(e) of such Act is amended by striking out "fiscal year 1986" each place it appears in paragraphs (2), (3), (4), and (5), and inserting in lieu thereof in each instance "fiscal year 1987".
(2) Section 1886(e)(3) of such Act is amended by striking out "(instead of the applicable percentage increase described in subsection (b)(3)(B)(i)".
(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985.
SEC. 702. APPLICATION OF REVISED HOSPITAL WAGE INDEX.
(a) APPLICATION OF REVISED INDEX PROSPECTIVELY.—Section 2316(b) of the Deficit Reduction Act of 1984 is amended to read as follows:
"(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring during fiscal year 1986 to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act, as that provision relates to the use of total gross hospital wages. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage differences of full-time and part-time workers.".
(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as if it had been included in the Deficit Reduction Act of 1984.
SEC. 703. PAYMENTS TO HOSPITALS FOR INDIRECT COSTS OF MEDICAL EDUCATION.
(a) PAYMENT FOR INDIRECT COSTS OF MEDICAL EDUCATION.—Section 1886(d)(5)(B) of the Social Security Act is amended to read as follows:
"(B) Effective with respect to discharges occurring on or after October 1, 1985, the Secretary shall provide for an additional payment amount for subsection (d) hospi-

tals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2), except as follows:

"(i) The amount of such additional payment shall be equal to the DRG payment multiplied by an educational adjustment factor equal to—

"(I) in the case of discharges occurring on or after October 1, 1985, and before October 1, 1987, $((1+r)^{.487}-1)/1.67)$, and

"(II) in the case of discharges occurring on or after October 1, 1987, $((1+r)^{.5795}-1)/1.50)$,

with r being the ratio of interns and residents to beds.

"(ii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

"(iii) Effective on and after July 1, 1986, such additional payments shall not be made with respect to any intern or resident whose costs are not recognized as reasonable by reason of clauses (ii), (iii), and (iv) of section 1861(v)(1)(P).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to discharges occurring on or after October 1, 1985.

SEC. 704. ADJUSTMENT FOR INDIRECT COSTS OF TEACHING HOSPITALS RELATED TO OUTPATIENT ACTIVITIES.

(a) INCLUSION OF OUTPATIENT ACTIVITIES.—Section 1886(d)(5)(B) of the Social Security Act (as amended by section 703 of this Act) is further amended by adding at the end thereof the following new clause:

"(iv) The Secretary shall continue to count interns and residents-in-training assigned to outpatient services of the hospital as part of the calculation of the full-time equivalent number of interns and residents-in-training.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on October 1, 1985.

SEC. 705. PAYMENTS FOR HOSPITALS WHICH SERVE A DISPROPORTIONATE SHARE OF LOW-INCOME MEDICARE PATIENTS.

(a) PAYMENT FOR HOSPITALS WHICH SERVE A DISPROPORTIONATE SHARE OF LOW-INCOME MEDICARE PATIENTS.—Section 1886(d)(5) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(F)(i) For fiscal years 1986 and 1987, the Secretary shall provide for an additional payment amount for subsection (d) hospitals which serve a significantly disproportionate number of low-income patients entitled to benefits under part A of this title.

"(ii) A payment under this subparagraph for a fiscal year shall be made to any hospital described in clause (i) which—

"(I) has 100 or more beds, and for which, for such fiscal year, the percentage determined under clause (iii) is 15 percent or greater, or

"(II) has fewer than 100 beds, and for which, for such fiscal year, the percentage determined under clause (iii) is 55 percent or greater.

"(iii) The percentage for a hospital is the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this title and were entitled to supplementary security income benefits (excluding any State supplementation) under title XVI of this Act, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this title.

"(iv) The amount of the additional payment under this subparagraph for each of the fiscal years 1986 and 1987 shall be equal to a percentage of the hospital's DRG payment, determined as follows: $((P-15)(.25))+2$, where P is the lesser of the hospital's percentage under clause (iii) or 55.".

(b) STATISTICAL FILE.—For purposes of implementing section 1886(d)(5)(F) of the Social Security Act, the Secretary of Health and Human Services shall, prior to October 1, 1986, develop for each State statistical files of individuals in such State who are eligible under both title XVIII of such Act and under title XVI of such Act (excluding any State supplementation). For purposes of establishing such files, any State having a plan approved under title XIX of such Act shall provide to the Secretary any data necessary to carry out this subsection.

(c) RATES.—(1) For the 12-month period beginning on October 1, 1985, the Secretary of Health and Human Services shall make payments under section 1886(d)(5)(F) of the Social Security Act on the basis of rates developed on the basis of available historical data, such as data available from the Congressional Budget Office. In the case of any hospital where historical data is not available for purposes of determining such rates, the Secretary shall make such payments on the basis of historical data available with respect to similar hospitals in the same region.

(2) Any hospital may have payments under section 1886(d)(5)(F) of the Social Security Act made on the basis of data provided by such hospital if the hospital shows, and the Secretary agrees, that such data is more accurate than the data which would otherwise be used by the Secretary.

(d) CONFORMING AMENDMENT.—Section 1886(d)(5)(C)(i) of the Social Security Act is amended by striking out ", and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this title".

(e) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

(f) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1985.

SEC. 706. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

(a) FREEZE AND LIMITATIONS.—Section 1861(v)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(P) Payments relating to the direct costs of approved educational activities at hospitals shall be made in accordance with the regulations in effect on January 1, 1985, except as follows:

"(i) For a hospital's first cost accounting period which begins on or after July 1, 1985 (the freeze accounting period), the amount of such costs recognized as reasonable by the Secretary shall not exceed the amount so recognized with respect to such hospital for such hospital's most recent cost accounting period ending prior to October 1, 1985 (the base accounting period), disregarding any salary or wage increases, and any cost center shifting or reallocation, implemented after May 1, 1985. If a hospital's cost accounting periods do not begin on July 1, the Secretary shall increase the limit established under the preceding sentence by an appropriate factor to reflect general increases in the costs of approved educational activities which took place between the end of the hospital's base accounting period and the beginning of its freeze accounting period, disregarding any increases in salaries or wages after May 1, 1985.

"(ii)(I) Effective on and after July 1, 1986, the Secretary shall not recognize as reasonable any such costs incurred with respect to any intern or resident-in-training for years in training which exceed the lesser of—

"(a) five years, or

"(b) the minimum number of years of formal training necessary to satisfy the requirements (as specified in the 1985-1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education) for initial board eligibility in the particular specialty for which such intern or resident-in-training is preparing, or, after July 1, 1989, in the event that the required number of years in training changes, the number of years which the Secretary may specify, after consultation with the Accreditation Council on Graduate Medical Education and after review of the recommendations of the Council on Graduate Medical Education established under section 799 of the Public Health Service Act; except that (1) if such change increases the required number of years, the revised number of years specified by the Secretary may not be greater than such increased required number of years nor less than the number of years specified in the 1985-1986 Directory, and (2) if such change decreases the required number of years, the revised number of years specified by the Secretary may not be greater than the number of years specified in the 1985-1986 Directory nor less than such decreased required number of years.

"(II) Notwithstanding subclause (I), the Secretary may recognize costs incurred with respect to additional years of training of interns or residents-in-training who are participating in geriatric fellowship programs which meet such criteria as the Secretary may establish, and who began their participation in such programs prior to July 1, 1991.

"(iii) Effective on and after July 1, 1986, the Secretary shall not recognize as reasonable any such costs incurred with respect to any intern or resident who is not a graduate of a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation), or of a school of osteopathy accredited by the American Osteopathic Association (or approved by such Association as meeting the standards necessary for such accreditation), or of a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose; except that—

"(I) for the 12-month period beginning on July 1, 1986, there shall be included, on an average cost per intern and resident basis, a number of interns and residents equal to the lesser of—

"(a) two-thirds of the number of such hospital's interns and residents for such 12-month period who are not graduates of such a school but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1986, or

"(b) two-thirds of the number of interns and residents who are not graduates of such a school, but with respect to whom such hospital received payments under this subparagraph for the 12-month period beginning July 1, 1985; and

"(II) for the 12-month period beginning on July 1, 1987, there shall be included, on an average cost per intern and resident basis, a number of interns and residents equal to the lesser of—

"(a) one-third of the number of such hospital's interns and residents for such 12-month period who are not graduates of such a school but who began their formal training required for initial board eligibility in the specialty for which they are preparing prior to July 1, 1986, or

"(b) one-third of the number of interns and residents who are not graduates of such a school, but with respect to whom such hospital received payments under this subparagraph for the 12-month period beginning July 1, 1985.

"(iv) In the case of a hospital at which, on October 1, 1985, more than 50 percent of the interns and residents-in-training for which such hospital receives payments under this subparagraph are not graduates of a school described in clause (iii), the provisions of clause (iii)(I) shall apply for the 24-month period beginning on July 1, 1986, and the provisions of clause (iii)(II) shall apply to the 36-month period beginning on July 1, 1988.".

(b) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act. The study shall address—

(A) the types and numbers of such programs, and number of students supported or trained under each program;

(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Congress prior to December 31, 1986.

(2) The Secretary shall conduct a separate study of the advisability of continuing the exemption under section 1861(v)(1)(P)(ii)(II) of the Social Security Act for geriatric fellowships, and of expanding such exemption to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the Congress prior to July 1, 1990.

(c) GAO STUDY.—(1) The Comptroller General shall conduct a study of the difference between the amounts of payments made under title XVIII of the Social Security Act with respect to inpatients in teaching hospital settings and the amounts of such payments which are made with respect to comparable patients who are treated in a nonteaching hospital setting. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any differences between the amounts of the payment components in teaching and nonteaching settings.

(2) In carrying out such study, the Comptroller General may utilize a sample of teaching hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984.

(3) The Comptroller General shall report the results of the study to the Congress prior to December 31, 1986.

(d) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

SEC. 707. CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS.

(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972, or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972), shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act if such system applies—

(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

(2) to the review of at least 75 percent of—

(A) all revenues or expenses in such geographic area for inpatient hospital services, and

(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX.

(b) APPROVAL.—The Secretary shall approve the request for a system under paragraph (1) of section 1886(c) of the Social Security Act with respect to a hospital cost control system if—

(1) the requirements of subparagraphs (B), (C), (D), and (E) of such paragraph are met with respect to the system; and

(2) the requirements of subparagraph (A) of such paragraph are met with respect to the geographic area served by such system by reason of subsection (a) of this section.

(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act, and shall continue to be effective with respect to a hospital cost control system for so long as such system continues to be approved pursuant to subsection (b).

SEC. 708. CONTINUATION OF HOSPITAL COST CONTROL SYSTEMS FOR CERTAIN STATES.

(a) CONTINUATION OF STATE SYSTEMS.—Section 1886(c) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(7) If a State makes a request under paragraph (5) prior to December 31, 1984, for approval of a State hospital reimbursement control system, and such request is approved, the Secretary may not discontinue payments under the system pursuant to paragraph (3)(B) prior to July 1, 1986, for so long as such State is taking steps to assure that such State will meet the requirements of paragraph (1)(C) for the applicable 36-month period.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 711A RESPONSIBILITIES OF MEDICARE HOSPITALS IN EMERGENCY CASES.

(a) REQUIREMENT OF MEDICARE HOSPITAL PROVIDER AGREEMENTS.—Section 1866(a) (1) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (g);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and";

(3) by inserting after subparagraph (H) the following new subparagraph:

"(I) in the case of a hospital, to comply with requirements of section 1867 to the extent applicable.".

(b) REQUIREMENTS.—Title XVIII of such Act is amended by inserting after section 1866 the following new section:

"EXAMINATION AND TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND WOMEN IN ACTIVE LABOR

"SEC. 1867. (a) Medical Screening Requirement.—In the case of any hospital which has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of such hospital's emergency department to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists or to determine if the individual is in active labor (within the meaning of subsection (e)(2)). The requirements of this subsection shall not apply if the provision of a medical screening examination would delay or otherwise be contrary to the prompt treatment of the individual's medical condition.

"(b) NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND ACTIVE LABOR.—If any individual (whether or not eligible for benefits under this title) comes to the hospital and the individual is determined (through the screening described in subsection (a) or otherwise) to have an emergency medical condition or to be in active labor, the hospital must provide either—

"(1) within the staff and facilities available at such hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition or to provide for treatment of the labor, unless the examination or treatment is refused; or

"(2) for transfer of the patient to another medical facility in accordance with subsection (c), unless the transfer is refused.

"(c) RESTRICTING TRANSFERS UNTIL PATIENT STABILIZED.—

"(1) GENERAL RULE.—If a patient at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B)) or is in active labor, the hospital may not transfer the patient unless—

"(A)(i) the patient (or a member of the patient's family if the patient is an unemancipated minor or is unable to communicate) requests that a transfer be effected; or

"(ii) there has been a determination by a physician (within the meaning of section 1861(r)(1)), or by other qualified medical personnel when a physician is not available in the emergency department, that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the benefits obtained from the provision of appropriate medical

treatment at another medical facility, taking into account the potential risks to the individual's medical condition involved in the transfer, outweigh the potential benefits to the individual's medical condition from not effecting the transfer; and

"(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

"(2) APPROPRIATE TRANSFER.—An appropriate transfer to a medical facility is a transfer—

"(A) in which the receiving facility—

"(i) has available space and qualified personnel for the treatment of the patient;

"(ii) has agreed to accept tranfer of the patient and to provide appropriate medical treatment; and

"(iii) is being provided appropriate medical records (or copies thereof) of the examination and treatment furnished at the transferring facility, or, if the patient's medical condition is sufficiently serious to require an immediate transfer, is notified of the transfer as soon as practicable under the circumstances;

"(B) in which the transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer; and

"(C) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of patients transferred.

"(d) ENFORCEMENT.—If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital shall be subject to—

"(1) termination of its provider agreement under this title in accordance with section 1866(b); or

"(2) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the provider and to the public.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy;

"(B) serious impairment to bodily functions; or

"(C) serious dysfunction of any bodily organ or part.

"(2) The term 'active labor' means labor at a time at which—

"(A) delivery is imminent; or

"(B) there is inadequate time to effect safe transfer to another hospital prior to delivery.

"(3)(A) The term 'to stabilize' means, with respect to an emergency medical condition, to provide such medical treatment of the condition as may be reasonably necessary under the circumstances and within the capability of the hospital—

"(i) so that the transfer of the individual will not, within reasonable medical probability, result in substantial risk of the death or serious impairment of the individual as a direct result of the transfer; or

"(ii) in order to determine that the benefits obtained from the provision of appropriate medical treatment at another medical facility, taking into account the potential risks to the individual's medical condition involved in the transfer, outweigh the potential benefits to the individual's medical condition from not affecting the transfer.

"(B) The term 'stabilized' means, with respect to an emergency medical condition, that such medical treatment of the condition has been provided as may be reasonably necessary under the circumstances and within the capability of the hospital—

"(i) so that the transfer of the individual will not, within reasonable medical probability, result in substantial risk of the death or serious impairment of the individual as a direct result of the transfer; or

"(ii) in order to determine that the benefits obtained from the provision of appropriate medical treatment at another medical facility, taking into account the potential risks to the individual's medical condition involved in the transfer, outweigh the potential benefits to the individual's medical condition from not effecting the transfer.

"(4) The term 'transfer' means the movement (including the discharge) of a patient outside a hospital's facilities at the direction of any person employed by, or affiliated or associated directly or indirectly with, the hospital, but does not include such a movement of a patient who has been declared dead or leaves the facility without the permission of any such person.

"(f) PREEMPTION.—The provisions of this section do not preempt any State or local law requirement except to the extent that the requirement directly conflicts with a requirement of this section.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on April 1, 1986.

(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the problems created by hospitals which transfer patients without providing necessary emergency medical treatment. The study shall include—

(A) a survey and assessment of the extent of the problems;

(B) a survey of the available remedies to such problems, including State law and licensing requirements and the use of professional standard setting organizations, and an assessment of the frequency and effectiveness with which such remedies are utilized;

(C) an assessment of the effectiveness of the remedy provided under section 1867 of the Social Security Act; and

(D) recommendations for changes in Federal law, including changes in section 1867 of the Social Security Act, and the possible use of incentives under title XIX of such Act to encourage States to establish similar remedies.

(2) The Comptroller General shall report the results of the study to the Congress within 2 years after the date of the enactment of this Act.

(e) REGULATIONS.—The Secretary of Health and Human Services shall promulgate final regulations for implementing section 1867 of the Social Security Act within 180 days after the date of the enactment of this Act, and shall report to Congress on the methods to be used for monitoring and enforcing compliance with such section.

SEC. 711B. SENSE OF THE SENATE WITH RESPECT TO INPATIENT HOSPITAL DEDUCTIBLE.

In view of the $92 Medicare hospital deductible increase that will go into effect January 1, 1986, it is the sense of the Senate that the Committee on Finance should report legislation which will reform calculation of the annual increase in such deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

SEC. 711C. PAYMENTS TO SOLE COMMUNITY HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNT.—Section 1886(d)(5)(ii) of the Social Security Act is amended by inserting after the second sentence thereof the following: "In the case of a sole community hospital which experiences, in any cost reporting period after the cost reporting period which was used as the base for determining the target amount for payments to such hospital under paragraph (1)(A)(i)(I), a significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit), the Secretary shall provide for such adjustment to the payment amounts under this subsection for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs, corrected as necessary for any change in the hospital's case mix in the cost reporting period for which the payment is being made.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments for cost reporting periods beginning on or after October 1, 1983.

(c) EXPIRATION.—The amendment made by this section shall cease to have effect on September 30, 1989.

(d) STUDY.—The Secretary of Health and Human Services shall complete a study of the effects of this provision. This study shall include recommendations on a permanent mechanism for needed expansions of sole community hospitals services and the hospital specific rates thereof. The study shall be completed by January 1, 1987.

SEC. 711. ASSET VALUATION FOR DONATIONS OF STATE PROPERTY TO NONPROFIT CORPORATIONS.

(a) GENERAL RULE.—Section 1861(v)(1)(O) of the Social Security Act is amended—

(1) by inserting ", except as provided in clause (iv)," in clause (i) after "such regulations shall provide", and

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

"(iv) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be applied as though they were originally included in the Deficit Reduction Act of 1984.

SEC. 711. INDIRECT TEACHING ADJUSTMENT FOR CERTAIN CLINICS.

In the case of a hospital which is receiving payments under title XVIII of the Social Security Act pursuant to a waiver under section 602(k) of the Social Security Amendments of 1983, payment of the adjustment for indirect costs of approved educational activities shall be made as if such hospital were receiving under part A of such title all the payments which are made under part B of such title solely by reason of such waiver.

SEC. 711. PSYCHOLOGISTS' SERVICES.

(a) CLARIFICATION OF INCLUSION AS INPATIENT HOSPITAL SERVICE.—Section 1861(b)(3) of the Social Security Act is amended by inserting before the semicolon at the end thereof "(including the services of a clinical psychologist, as defined by the Secretary)".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

Subpart B—Benefits

SEC. 712. EXTENSION AND PAYMENT FOR HOSPICE CARE.

(a) ELIMINATION OF SUNSET.—Section 122(h)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended—

(1) in subparagraph (A)—

(A) by striking out "(h)(1)(A) Subject to subparagraph (B), the" and inserting in lieu thereof "(h)(1) The", and

(B) by striking out ", and before October 1, 1986", and

(2) by striking out subparagraph (B).

(b) INCREASE IN PAYMENT OF DAILY RATES FOR HOSPICE CARE FOR FISCAL YEAR 1986.—(1) Section 1814(i)(1)(B) of the Social Security Act is amended to read as follows:

"(B) Notwithstanding subparagraph (A), for hospice care furnished on or after October 1, 1985, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.".

(2) Section 1814(i)(1)(C) of such Act is amended by striking out "1985" and inserting in lieu thereof "1986".

SEC. 713. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

(a) MORATORIUM.—Prior to January 1, 1987, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall cooperate with representatives of clinical laboratories in conducting a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act. If such a study is conducted, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

SEC. 714. HOME HEALTH WAIVER OF LIABILITY.

The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until 12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act.

SEC. 715. MORATORIUM ON IMPLEMENTATION OF HOME HEALTH PAYMENT REGULATIONS.

The Secretary of Health and Human Services shall not, prior to July 1, 1986, implement the regulations issued effective July 1, 1985, with respect to payments for home health services under title XVIII of the Social Security Act.

SEC. 716. STUDIES RELATING TO PHYSICAL THERAPISTS AND OTHER PROFESSIONALS.

(a) SUPERVISION OF HOME HEALTH SERVICES.—The Secretary of Health and Human Services shall conduct a study of the advisability of changing the requirements of title XVIII of the Social Security Act to allow home health services to be provided under the supervision of a physical therapist or other health care professional, rather than requiring the supervision of a physician or registered nurse.

(b) OFFICE REQUIREMENT.—The Secretary of Health and Human Services shall conduct a study on the advisability of deleting the requirement under such title that a physical therapist must have an office equipped with specified equipment, even if such therapist provides all such services in patients' homes.

(c) REPORTS.—The Secretary shall report the results of the studies to the Congress prior to April 1, 1986.

SEC. 716A. PROMULGATION OF INPATIENT HOSPITAL DEDUCTIBLE.

(a) CHANGE IN DEADLINE.—Section 1813(b)(2) of the Social Security Act is amended by striking out "October 1" and inserting in lieu thereof "September 15".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years after 1985.

PART 2—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

SEC. 717. EXTENSION OF WORKING AGED PROVISION.

(a) EXTENSION OF SECONDARY PAYOR STATUS BEYOND AGE 70.—(1) Section 1862(b)(3)(A)(i) of the Social Security Act is amended by striking out "to an individual who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month) who is employed at the time such item or service is furnished" and inserting in lieu thereof "to an individual who is employed at the time such item or service is furnished, or to the spouse of such individual,".

(2) Section 1862(b)(3)(A)(iii) of such Act is amended by striking out "and ending with the month before the month in which such individual attains the age of 70".

(b) ENROLLMENT PERIOD.—(1) Section 1837(i)(3) of such Act is amended to read as follows:

"(3) The special enrollment period referred to in paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment and ending seven months later.".

(2) Section 1838(e) of such Act is amended to read as follows:

"(e) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1837(i)(3)—

"(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

"(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.".

(c) AMENDMENTS TO AGE DISCRIMINATION IN EMPLOYMENT ACT.—(1) Section 4(g)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)) is amended by striking out "aged 65 through 69" each place it appears, and inserting in lieu thereof in each instance "aged 65 or older".

(2) Section 12 of such Act (29 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(d) Section 4(g) shall apply to individuals who are at least 40 years of age.".

(3) Section 12(a) of such Act (29 U.S.C. 631(a)) is amended by striking out "The prohibitions" and inserting in lieu thereof "Except as otherwise provided in this section, the prohibitions".

(4) Section 4 of such Act (29 U.S.C. 623) is amended by redesignating the second subsection (g), added by section 802 of the Older Americans Act Amendments of 1984, as subsection (h).

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1986.

(2) The amendments made by subsections (b) and (c) shall become effective on January 1, 1986.

SEC. 718. CONTINUATION OF END STAGE RENAL DISEASE NETWORKS.

The Secretary of Health and Human Services shall maintain the renal disease network organizations established under section 1881(c) of the Social Security Act, and may not merge the network into other organizations or entities.

SEC. 719. EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

The Secretary of Health and Human Services shall extend, for a period of three additional years, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967.

SEC. 720. COVERAGE OF RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.

(a) UNDER MEDICARE PROGRAM.—

(1) AS PART OF HOME HEALTH SERVICES.—(A) Section 1861(m)(2) of the Social Security Act is amended by inserting before the semicolon at the end the following: ", or respiratory care for a qualified respiratory care patient (as defined in subsection (ee))".

(B) Sections 1814(a)(2)(C) and 1835(a)(2)(A) of such Act are amended by inserting after "speech therapy" the following: ", or, in the case of a qualified respiratory care patient (as defined in section 1861(ee)), respiratory care,".

(2) AS PART OF EXTENDED CARE SERVICES.—(A) Section 1861(h)(3) of such Act is amended by inserting after "speech therapy" the following: ", or respiratory care for a qualified respiratory care patient (as defined in subsection (ee)),".

(B) Section 1814(a)(2)(B) of such Act is amended by inserting after "rehabilitation services," the following: "or, in the case of a qualified respiratory care patient (as defined in section 1861(ee)), respiratory care,".

(C) Section 1813(a)(3) of such Act is amended by inserting after "one-eighth" the following: "(or one-sixteenth in the case of a qualified respiratory care patient, as defined in section 1861(ee))".

(3) DEFINITION OF QUALIFIED RESPIRATORY CARE PATIENT.—Section 1861 of such Act is amended by adding at the end the following new subsection:

"Qualified Respiratory Care Patient

"(ee) The term 'qualified respiratory care patient' means—

"(1) with respect to respiratory care furnished as part of extended care services during a spell of illness, an individual who—

"(A) is medically dependent on a ventilator for life support at least six hours per day;

"(B) before admission to the skilled nursing facility, was so dependent (for life support at least six hours per day) as part of inpatient hospital services for at least 30 consecutive days during the spell of illness; and

"(C) but for the provision of respiratory care as part of the extended care services, would require respiratory care as part of inpatient hospital services; and

"(2) with respect to respiratory care furnished as part of home health services during or following a spell of illness, an individual who—

"(A) is medically dependent on a ventilator for life support at least six hours per day;

"(B) before first being furnished home health services during the spell of illness, was so dependent (for life support at least six hours per day) as part of inpatient hospital services or post-hospital extended care

services for at least 30 consecutive days during the spell of illness;

"(C) but for the provision of respiratory care as part of the home health services, would require respiratory care as part of inpatient hospital services or extended care services;

"(D) has adequate social support services to be cared for at home; and

"(E) wishes to be cared for at home.".

(b) UNDER MEDICAID PROGRAM.—Section 1902(a)(10) of such Act is amended by striking out "and" at the end of subparagraph (C), by adding "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) for the inclusion of home respiratory care for any individual who—

"(i) is medically dependent on a ventilator for life support at least six hours per day;

"(ii) has been so dependent for at least 30 consecutive days or the maximum number of days authorized under the State plan, whichever is less, as an inpatient in one or more hospitals, skilled nursing facilities, or intermediate care facilities;

"(iii) but for the inclusion of home respiratory care, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility payment for which would be made under the State plan;

"(iv) has adequate social support services to be cared for at home; and

"(v) wishes to be cared for at home;".

(c) EFFECTIVE DATES.- Except as otherwise provided in paragraph (2), the amendments made by this section shall apply to services furnished on or after the date of the enactment of this act.

SEC. 721. AUDIT AND MEDICAL CLAIMS REVIEW.

In addition to any funds otherwise provided for fiscal years 1986, 1987, and 1988 for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act, there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $105,000,000 for each of such fiscal years for payments to such intermediaries and carriers under such agreements to be used exclusively for the purpose of carrying out provider cost audits and reviews of medical necessity, consistent with the provisions of sections 1816 and 1842 of the Social Security Act.

SEC. 722. ACCESS TO SKILLED NURSING FACILITIES.

(a) OPTIONAL PROSPECTIVE RATES FOR CERTAIN SKILLED NURSING FACILITIES.—Section 1888 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (including capital and return on equity) of extended care services provided in a fiscal year if such facility had, in the preceding fiscal year, fewer than 1,500 patient days with respect to which payments were made under this title. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1861(v) and subsections (a) through (c) of this section. This subsection shall not apply to a facility for any fiscal year immediately following a fiscal year in which such facility had 1,500 or more patient days with respect to which payments were made under this title, without regard to whether payments were made under this subsection during such preceding fiscal year.

"(2) The amount of the payment under this section shall be determined on a per diem basis. For skilled nursing facilities located in an urban area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a), and for skilled nursing facilities located in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a).

"(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a), and the term 'region' shall have the same meaning as under section 1886(d)(2)(D).

"(4) The Secretary shall establish the prospective payment amounts for each fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year.

"(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

"(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.".

(b) REDUCTION IN NUMBER OF FISCAL INTERMEDIARIES.—Section 1816(e) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding subsections (a) and (d) and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement under this section to perform functions under such agreement with respect to freestanding skilled nursing facilities in the region. By not later than April 1, 1987, the Secretary shall limit the number of such regional agencies to not more than ten.".

(c) PUBLICATION OF DATA RELATING TO ADJUSTMENTS TO SNF LIMITS.—Section 1888(c) of the Social Security Act is amended by adding at the end thereof the following: "The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.".

(d) REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the 30-month period beginning with the first month beginning after the date of the enactment of this Act.

(e) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to fiscal years beginning on or after October 1, 1985. The Secretary shall establish interim prospective payment rates for the fiscal year beginning on October 1, 1985, within 90 days after the date of the enactment of this Act, and shall establish final rates within 180 days after such date of enactment.

(2) The amendment made by subsection (b) shall be implemented by the Secretary prior to April 1, 1987.

(3) The amendment made by subsection (c) shall become effective on the date of the enactment of this Act.

SEC. 723. CHARGES BY PHYSICIANS FOR SERVICES BILLED TO A HEALTH MAINTENANCE ORGANIZATION.

(a) PARTICIPATING PHYSICIAN.—Section 1842(h)(1) of the Social Security Act is amended by inserting after the second sentence the following: "Such agreement shall also provide that the reasonable charge shall be the full charge in the case where such participating physician or supplier furnishes items or services (which were immediately required as described in section 1876(c)(4)(B)) to an individual who is enrolled in a health maintenance organization or competitive medical plan pursuant to section 1876 during such period.".

(b) NONPARTICIPATING PHYSICIAN.—Section 1842(j)(1) of such Act is amended by inserting "(or bills such an individual's health maintenance organization or competitive medical plan for services furnished to such individual which were immediately required as described in section 1876(c)(4)(B))" after "bills individuals enrolled under this part".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to items and services furnished on or after October 1, 1985, and before October 1, 1986.

SEC. 724. TIMELY PUBLICATION OF PAYMENT RATES FOR HEALTH MAINTENANCE ORGANIZATIONS.

(a) PUBLICATION DEADLINE.—Section 1876(a)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(F) The Secretary shall establish, and publish in the Federal Register, the annual per capita rate of payment for each class which shall apply to a calendar year within 10 days after publication of the hospital prospective payment rates which will become effective on the October 1 preceding such calendar year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on January 1, 1986.

SEC. 725. LIVER TRANSPLANTS.

(a) Congress finds that:

(1) There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

(2) There are 4,000 to 4,700 potential candidates in the United States each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

(3) There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

(4) After extensive review and consideration of all the available data, an National Institutes of Health expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

(5) National Institutes of Health further recommended that liver transplants be done in individuals under 18 years of age.

(6) The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

(7) The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) Based upon the above findings, it is the sense of the Senate that:

(1) For the purposes of title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

(2) A liver transplant shall be covered under such title when reasonable and medically necessary.

(3) The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

PART 3—PROVISIONS RELATING TO PART B OF MEDICARE

SEC. 725. EXTENSION OF PHYSICIAN FEE FREEZE FOR NONPARTICIPATING PHYSICIANS AND IMPROVEMENTS IN THE PARTICIPATING PHYSICIAN PROGRAM.

(a) ONE-YEAR EXTENSION FOR NONPARTICIPATING PHYSICIANS.—

(1) EXTENSION.—Section 1842(b)(4) of the Social Security Act is amended—

(A) in subparagraph (A)—

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

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

"(ii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during October 1, 1985, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

"(iii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during any 12-month period beginning on or after October 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous fiscal year for physicians who were participating physicians during that year.";

(B) in subparagraph (B)—

(i) by inserting "(i)" after "(B)", and

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

"(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 12-month period beginning October 1, 1985, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services—

"(I) if such physician was not a participating physician at any time during the 15-month period beginning on July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983; and

"(II) if such physician was a participating physician during the 15-month period beginning on July 1, 1984, the Secretary shall not recognize increases in actual charges above the level of the physician's actual charges billed during the 12-month period beginning on April 1, 1984.".

(C) in subparagraph (C)—

(i) by inserting "(i)" after "(C)",

(ii) by striking out "(A)" and inserting in lieu thereof "(A)(i)" each place it appears, and

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

"(ii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after September 30, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).", and

(D) in subparagraph (D)—

(i) by striking out "who at no time" and all that follows through "subsection (h)(1))" and insert in lieu thereof "who was not a participating physician (as defined in subsection (h)(1)) on September 30, 1985",

(ii) by inserting "(i)" after "(D)", and

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

"(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1986, or October 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) on September 30, 1986—

"(I) if such physician was not a participating physician at any time during the 15-month period beginning on July 1, 1984, the Secretary shall not recognize increases in actual charges for services furnished during the 12-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984; and

"(II) if such physician was a participating physician during the 15-month period beginning on July 1, 1984, the Secretary shall not recognize increases in actual charges for services furnished during the 12-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 12-month period beginning on April 1, 1984.".

(2) CONTINUED ENFORCEMENT.—The first sentence of section 1842(j)(1) of such Act is amended to read as follows: "In the case of a physician who is not a participating physician for items and services furnished during a portion of the 27-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period.".

(3) PERIOD FOR ENTERING AGREEMENTS TO BE PARTICIPATING PHYSICIAN.—The Secretary of Health and Human Services shall provide for a 30-day period, beginning on the date of the enactment of this Act, in which physicians may enter into an agreement under section 1842(h)(1) of the Social Security Act for the 12-month period beginning October 1, 1985, or terminate such an agreement previously entered into for such period.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after October 1, 1985.

(b) INCENTIVES FOR PARTICIPATING PHYSICIAN PROGRAM.—

(1) ONE-YEAR EXTENSION OF TRANSFER OF FUNDS FOR CARRIERS.—Section 2306(e) of the Deficit Reduction Act of 1984 is amended—

(A) by striking out "and 1985" and inserting in lieu thereof ", 1985, and 1986";

(B) by striking out "the amendments made by this section" and inserting in lieu thereof "subsections (b)(4), (h), and (j) of section 1842 of the Social Security Act";

(C) by striking out "for fiscal year 1985" and inserting in lieu thereof "for each of fiscal years 1985 and 1986"; and

(D) by adding at the end thereof the following new sentence: "A significant proportion of such funds shall be used for the expansion of the participating physician and supplier program and for the development of professional relations staffs dedicated to addressing the billing and other problems of physicians and suppliers participating in that program.".

(2) IMPROVEMENT OF PARTICIPATING PHYSICIAN DIRECTORIES.—Section 1842(i) of the Social Security Act is amended—

(A) in the first sentence of paragraph (2)—

(i) by striking out "a directory" and inserting in lieu thereof "directories (for appropriate local geographic areas)"; and

(ii) by inserting "for that area" before "for that fiscal year";

(B) in the second sentence of paragraph (2), by striking out "The directory" and inserting in lieu thereof "Each directory";

(C) in paragraph (3)—

(i) by striking out "directory" the first place it appears and inserting in lieu thereof "the directories"; and

(ii) by striking out "directory" the second place it appears and inserting in lieu thereof "the appropriate area directory or directories"; and

(D) in paragraph (4)—

(i) by striking out "directory" and inserting in lieu thereof "the directories"; and

(ii) by adding at the end the following: "The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area.".

(3) ELIMINATION OF PHYSICIAN ASSIGNMENT RATE LIST.—Section 1842(i) of such Act is further amended—

(A) by striking out "(i)(1)" and all that follows through the end of paragraph (1);

(B) by striking out "subsection (h)(1)" in paragraph (2) and inserting in lieu thereof "paragraph (1)";

(C) by striking out "such list and" and "the list and" each place either appears in paragraphs (3) and (4); and

(D) by redesignating paragraphs (2) through (4) as paragraphs (4) through (6) of subsection (h), respectively.

(4) INFORMATION ON THE PARTICIPATING PHYSICIAN AND SUPPLIER PROGRAM IN EXPLANATIONS OF MEDICARE BENEFITS FOR UNASSIGNED CLAIMS.—Section 1842(h) of such Act, as previously amended by this subsection, is further amended by adding at the end the following new paragraphs:

"(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1833(a)(1) (made other than on an assignment-related basis, described in paragraph (8)), shall include—

"(A) a reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers); and

"(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers.

"(8) For purposes of this title, a claim is considered to be paid on an 'assignment-related basis' if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii), in accordance with subsection (b)(6)(B), or under the procedure described in section 1870(f)(1).".

(5) EFFECTIVE DATE.—Section 1842(b)(7) of the Social Security Act, as added by paragraph (4) of this subsection, shall apply to

explanations of benefits provided on or after such date (not later than April 1, 1986) as the Secretary of Health and Human Services shall specify.

(c) CHARGES BY PHYSICIAN WHERE MEDICARE IS NOT BILLED.—

(1) INAPPLICABILITY OF PENALTIES.—Section 1842(j) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5) Paragraph (1) shall not apply in any case where no payment is requested or billed under this part by any party with respect to the particular physicians' services involved.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished after the date of the enactment of this Act.

SEC. 726. PART B PREMIUM.

(a) ONE-YEAR EXTENSION.—Section 1839(e) of the Social Security Act is amended by striking out "1988" each place it appears in paragraphs (1) and (2), and inserting in lieu thereof in each instance "1989".

(b) NO NET REDUCTION IN BENEFIT CHECK.—Section 1839(f) of such Act is amended to read as follows:

"(f)(1) If no cost-of-living increase becomes effective under section 215(i) in December of 1985, 1986, or 1987, the monthly premium of each individual enrolled under this part for each month in the succeeding year shall (except as otherwise provided in subsection (b)) be the same as the monthly premium (disregarding subsection (b)) of the individual for such December.

"(2)(A) If a cost-of-living increase does become effective under section 215(i) in December of 1985, 1986, or 1987, the monthly premium for the months in the succeeding calendar year for any individual described in subparagraph (B) shall (except as otherwise provided in subsection (b)) be reduced to the extent necessary to provide that the individual's 'net check amount' for any month in such succeeding calendar year for which he is entitled to a benefit under section 202 or 223 is not less than such individual's 'net check amount' for such December.

"(B) Subparagraph (A) shall apply to any individual—

"(i) who is entitled to a benefit under section 202 or 223 for the applicable December and the preceding November, and

"(ii) whose monthly premium for such December and the following January is deducted from those benefits under section 1840(a)(1).

"(C) For purposes of this paragraph, an individual's 'net check amount' for a given month is the amount of his benefit under section 202 or 223 for the month preceding such given month, minus the amount of the monthly premium for such given month (determined without regard to subsection (b)).

"(D) For purposes of this paragraph, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 202 or 223.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 727. CORRECTION OF INAPPROPRIATE MEDICARE REASONABLE CHARGE DETERMINATIONS FOR HOSPITAL-BASED PHYSICIANS.

(a) DETERMINATION OF CUSTOMARY CHARGES.—Notwithstanding the provisions of section 1842(b) of the Social Security Act, in the case of a physician whose customary charges are based on compensation which was paid to him by a hospital and who subsequently changes his arrangement with such hospital on or after September 30, 1982, to an arrangement under which such physician bills for his services on his own behalf, such customary charges shall be determined, effective with respect to services furnished on and after October 1, 1985, and prior to October 1, 1986, by—

(1) ascertaining the actual charges such physician billed for his services on his own behalf during the billing period specified in subsection (b);

(B) deflating such actual charges in accordance with the provisions of subsection (c); and

(C) calculating such customary charges in accordance with the provisions of section 1842(b) of the Social Security Act, except that such deflated actual charges shall be deemed to have been billed by such physician during the period described in subsection (d).

(b) BILLING PERIOD.—For purposes of this section, a billing period shall be the 12-month period ending on March 31, 1985; except that, if a physician does not have sufficient billings during such 12-month period to determine his customary charges, the billing period shall be the first 3-month period which begins on or after February 1, 1985, for which such physician has sufficient billings to serve as a basis for the determination of such physician's customary charges.

(c) DEFLATING OF ACTUAL CHARGES.—The actual charges for a billing period shall be deflated by multiplying them by a fraction—

(1) the numerator of which is—

(2) the value of the physicians' services component of the Consumer Price Index (U.S. City Average for All Urban Consumers) for September 1984, in the case of a physician who is a participating physician prior to October 1, 1985, or

(3) the average value of such component for the calendar year 1982, in the case of a physician who is not a participating physician prior to October 1, 1985; and

(2) the denominator of which is the value of such component for the midpoint of the billing period applicable to such physician as determined under subsection (b).

(d) DEEMED TIME OF BILLING.—For purposes of subsection (a)(3), the deflated actual charges referred to in subsection (c) shall be deemed to have been billed—

(1) in the 12-month period ending on March 31, 1985, in the case of a physician who was a participating physician prior to October 1, 1985; or

(2) in 1982 in the case of a physician who was not a participating physician prior to October 1, 1985.

SEC. 728. PAYMENTS FOR MEDICAL AND OTHER HEALTH SERVICES.

(a) PAYMENT FREEZE.—Section 1842(b)(4) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(E) In the case of medical and other health services (as defined in section 1861(s)) for which payment is based on reasonable charge, other than physicians' services and clinical laboratory services—

"(i) the customary and prevailing charges under paragraph (3), and the lowest charge referred to in the fourth sentence of such paragraph, for such services (other than durable medical equipment purchased, or leased under a purchase agreement) furnished during the 12-month period beginning on October 1, 1985, may not exceed such charges recognized under this section for the 12-month period beginning on October 1, 1984, increased by 1 percent; and

"(ii) the prevailing charge under paragraph (3), and the lowest charge referred to in the fourth sentence of such paragraph, for such services (including all durable medical equipment) furnished during any 12-month period beginning on or after October 1, 1986, may not exceed such charges for the preceding 12-month period increased by the same percentage as the percentage increase in the Consumer Price Index for All Urban Consumers (United States city average) for the 12-month period ending on the preceding June 30.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after October 1, 1985.

SEC. 729. PAYMENT FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS AND OTHER OPERATIONS.

(a) LIMITATION ON PAYMENT.—Section 1862(a) of the Social Security Act is amended—

(1) by striking out "or" at the end of paragraph (13),

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; or", and

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

"(15) which are for services of an assistant at surgery in a cataract operation unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of title XI) has approved of the use of such an assistant in the surgical procedure based on the existence of complicating medical condition.".

(b) ADDITIONAL PRO FUNCTIONS.—Section 1154(a)(8) of such Act is amended by inserting before the period at the end the following: "or as may be required to carry out section 1862(a)(15)".

(c) PROHIBITION FOR SUBMITTING BILL FOR WHICH PAYMENT MAY NOT BE MADE.—Section 1842 of such Act is amended—

(1) in subsection (j)(2), by inserting "or subsection (k)" after "paragraph (1)", and

(2) by adding at the end thereof the following new subsection:

"(k)(1) If a physician knowingly and willfully bills an individual enrolled under this part charges for services as an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(2) If a physician knowingly and willfully bills an individual enrolled under this part charges that include a charge for an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(d) EXTENSION OF PROHIBITION TO OTHER PROCEDURES.—The Secretary of Health and Human Services, after consultation with the Prospective Payment Assessment Commission, shall develop recommendations and guidelines relating to other surgical procedures for which an assistant at surgery is generally not medically necessary and the circumstances under which the use of an assistant at surgery is generally medically appropriate but should be subject to prior approval of an appropriate entity. The Secretary shall report to Congress, not later than April 1, 1986, on these recommendations and guidelines.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed on or after October 1, 1985.

SEC. 730. LIMITATION ON MEDICARE PAYMENT FOR POST-CATARACT SURGERY PATIENTS.

(a) PAYMENT FOR REPLACEMENT OF LOST OR DAMAGED CATARACT EYEGLASSES AND CATARACT CONTACT LENSES.—With respect to the payment for replacement cataract eyeglasses and cataract contact lenses under title XVIII of the Social Security Act in the case of an individual beneficiary—

(1) payment may be made for the replacement only once every year of lost or damaged cataract eyeglasses, and

(2) payment may be made—

(A) in the first year after surgery, for one original cataract contact lens for each eye and for the replacement only twice of a lost or damaged cataract contact lens for each eye, and

(B) in each subsequent year, for the replacement only twice of a lost or damaged cataract contact lens for each eye.

(b) DETERMINATION OF SEPARATE PAYMENT AMOUNTS FOR PROSTHETIC LENSES AND PROFESSIONAL SERVICES.—Section 1842(b) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(8) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

"(A) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1861(r)); and

"(B) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.".

(c) EFFECTIVE DATE.—(1) The amendments made by this section shall apply to items and services furnished on or after October 1, 1985.

(2) In applying the amendment made by subsection (a), there shall not be taken into account any cataract eyeglasses or contact lenses replaced before October 1, 1985.

SEC. 731. DEMONSTRATION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act (hereafter in this section referred to as "medicare beneficiaries").

(b) PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

(1) health screenings,

(2) health risk appraisals,

(3) immunizations, and

(4) counseling on and instruction in—

(A) diet and nutrition,

(B) reduction of stress,

(C) exercise and exercise programs,

(D) sleep regulation,

(E) injury prevention,

(F) prevention of alcohol and drug abuse,

(G) prevention of mental health disorders,

(H) self-care, including use of medication, and

(I) reduction or cessation of smoking.

(c) CONDUCT OF PROGRAM.—The demonstration program shall—

(1) be conducted under the direction of accredited public or private nonprofit schools of public health, or preventive medicine departments of accredited schools of medicine;

(2) be conducted in no fewer than five sites, which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

(4) be designed—

(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

(C) to facilitate evaluation under subsection (d).

(d) EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act.

(e) REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

(2) Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report—

(A) the evaluation described in subsection (d), and

(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

(f) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the demonstration program shall not exceed $4,000,000 over the duration of the program.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 732. AMBULATORY SURGERY.

(a) LIMITATION ON REASONABLE COST OR CHARGE.—

(1) AMBULATORY SURGICAL CENTERS AND PHYSICIAN OFFICES.—Section 1833(i)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In no case shall the standard overhead amount established with respect to a surgical procedure under subparagraph (A) or (B) exceed the DRG rate for the same surgical procedure when provided on an inpatient basis in a hospital in the same area, as determined under section 1886.".

(2) HOSPITAL OUTPATIENT DEPARTMENTS.—(A) Section 1833(a)(4) of such Act is amended to read as follows:

"(4) in the case of facility services described in section 1832(a)(2)(F), and outpatient hospital services furnished in connection with surgical procedures specified by the Secretary pursuant to section 1833(i)(1)(A), the applicable amount as determined under section 1833(i).".

(B) Section 1833(i)(3) of such Act is amended to read as follows:

"(3) The amount of the payment to be made under this part for outpatient hospital services furnished in connection with a surgical procedure specified under paragraph (1)(A) shall be equal to 80 percent of the standard overhead amount with respect to the same surgical procedure when provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A); except that additional payment shall be made with respect to 80 percent of the direct costs of approved educational activities, capital related costs, or costs of anesthesia services provided by a certified registered nurse anesthetist, in the same manner as such payments are made with respect to outpatient hospital services not paid for under this subsection.".

(3) ANNUAL UPDATING.—(A) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by striking out "shall be reviewed periodically" and inserting in lieu thereof "shall be reviewed and updated not less often than annually,".

(B) Section 1833(i)(1) of such Act is amended by adding at the end thereof (after and below subparagraph (B)) the following: "The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than annually.".

(b) FACILITY SERVICES TO INCLUDE RELATED SERVICES.—(1) Section 1833(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) For purposes of this section, 'facility services' shall include all medical and other health services (as defined in section 1861(s)) which are furnished in connection with a surgical procedure specified under paragraph (1), other than the physicians' services and anesthesia services furnished by a certified registered nurse anesthetist.

"(B) The Secretary shall establish a method of payment for anesthesia services furnished by a certified registered nurse anesthetist in connection with a surgical procedure for which payment is made pursuant to this subsection and which are furnished in an ambulatory surgical center or in a physician's office. Such method may be based on the payment method under paragraph (3) or any other basis which the Secretary finds appropriate. Such method shall not, to the extent feasible, create financial incentives or disincentives for the use of certified registered nurse anesthetists employed by an ambulatory surgical center or by a physician.".

(2) Section 1832(a)(2)(F) of such Act is amended by striking out "services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and" and inserting in lieu thereof "physicians' services, facility services, and anesthesia services furnished by a certified registered nurse anesthetist, including all preoperative and postoperative services,".

(3) Section 1833(i)(4)(A) of such Act is amended by striking out "and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services)" and inserting in lieu thereof ", the physicians' services, and anesthesia services furnished by a certified registered nurse anesthetist".

(c) PRO REVIEW.—(1) Section 1154(a)(1) of the Social Security Act is amended by inserting "and subject to the requirements of subsection (d)" after "subject to the terms of the contract".

(2) Section 1154 of such Act is amended by adding at the end thereof the following new subsection:

"(d) Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) will include all ambulatory surgical procedures described in section 1833(i)(1)(A) which are performed in the area, or, at the discretion of the Secretary, a sample of selected procedures.".

(d) COINSURANCE AND DEDUCTIBLE TO APPLY WITHOUT REGARD TO SETTING OF AMBULATORY SURGERY OR ASSIGNMENT.—(1) Section 1832(a)(2)(F)(i) of the Social Security Act is amended by inserting "standard overhead" before "amount determined under section 1833(i)(2)(A)".

(2) Section 1832(a)(2)(F)(ii) of such Act is amended by inserting "standard overhead" before "amount determined under section 1833(i)(2)(B)".

(3) Section 1833(a)(1) of such Act is amended—

(A) by inserting "and" before "(E)"; and

(B) by striking out ", and (F)" and all that follows and inserting in lieu thereof a semicolon.

(4) Section 1833(a)(4) of such Act is amended by striking out "the applicable amount described in paragraph (2) of section 1833(i)" and inserting in lieu thereof "80 percent of the applicable standard overhead amount described in subsection (i)(2) of this section".

(5) Section 1833(b) of such Act is amended by striking out "(3) such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) or under subsection (i)(2) or (i)(4), and (4)" and inserting in lieu thereof "and (3)".

(6) Subparagraphs (A) and (B) of section 1833(i)(2) of such Act are each amended by inserting "80 percent of" before "a standard overhead amount".

(e) EFFECTIVE DATES.—(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after October 1, 1985.

(2) The amendments made by subsection (a)(3) shall apply on and after January 1, 1986. Prior to January 1, 1986, the Secretary of Health and Human Services shall update the amounts established under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act on the basis of current data to account more appropriately for the costs actually incurred.

(3) The amendments made by subsection (c) shall apply to contracts entered into or renewed on or after October 1, 1985.

PART 4—MISCELLANEOUS MEDICARE PROVISIONS

SEC. 733. EXTENSION OF ON LOK WAIVER.

(a) CONTINUED APPROVAL.—

(1) MEDICARE WAIVERS.—Notwithstanding any limitations contained in section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services shall continue approval of the risk-sharing application described in section 603(c)(1) of the Social Security Amendments of 1983 for waivers of certain requirements of title XVIII of the Social Security Act after the end of the period described in that section.

(2) MEDICAID WAIVERS.—Notwithstanding any limitations contained in section 1115 of the Social Security Act, the Secretary shall approve any application of the Department of Health Services, State of California, for a waiver of requirements of title XIX of such Act in order to continue carrying out the demonstration project referred to in section 603(c)(2) of the Social Security Amendments of 1983 after the end of the period described in that section.

(b) TERMS, CONDITIONS, AND PERIOD OF APPROVAL.—The Secretary's approval of an application (or renewal of an application) under this section—

(1) shall be on the same terms and conditions as applied with respect to the corresponding application under section 603(c) of the Social Security Amendments of 1983 as of July 1, 1985, except that requirements relating to collection and evaluation of information for demonstration purposes (and not for operational purposes) shall not apply; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with the terms and conditions described in paragraph (1).

SEC. 734. ADDITIONAL MEMBERS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.

(a) EXPANSION OF MEMBERSHIP.—Section 1886(e)(6)(A) of the Social Security Act is amended by striking out "15 individuals" and inserting in lieu thereof "17 individuals".

(b) APPOINTMENTS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of three years.

SEC. 735. REMOVAL OF PROHIBITION ON COMMENTS BY MEDICARE AND SOCIAL SECURITY ACTUARIES RELATING TO ECONOMIC ASSUMPTIONS.

(a) FEDERAL OLD-AGE AND DISABILITY INSURANCE TRUST FUND.—Section 201(c) of the Social Security Act is amended by striking out "; Provided, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall" and inserting in lieu thereof ". Such report shall".

(b) MEDICARE TRUST FUNDS.—Sections 1817(b) and 1841(b) of such Act are each amended by striking out ": Provided, That the certification shall not refer to economic assumptions underlying the Trustee's report".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 736. EXTENSION OF GAO REPORTING DATE.

(a) EXTENSION.—Section 2326(e)(2) of the Deficit Reduction Act of 1984 is amended by striking out "12 months" and inserting in lieu thereof "18 months".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as though it were included in the Deficit Reduction Act of 1984 as originally enacted.

PART 5—PEER REVIEW ORGANIZATIONS

SEC. 737. HEALTH MAINTENANCE ORGANIZATION MEMBERSHIP ON PEER REVIEW ORGANIZATION BOARDS.

(a) REMOVAL OF ONE-MEMBER LIMITATION.—Section 1153(b)(2)(A) of the Social Security Act is amended by striking out "consists only of one individual member of the governing board" and inserting in lieu thereof "consists only of members of the governing board".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 738. PEER REVIEW ORGANIZATION REIMBURSEMENT.

(a) REIMBURSEMENT AMOUNTS.—Section 1866(a)(1)(F) of the Social Security Act is amended—

(1) by striking out clause (iii);

(2) by inserting "and" at the end of clause (ii);

(3) by redesignating clause (iv) as clause (iii); and

(4) by striking out "1982" in clause (iii) as so redesignated and inserting in lieu thereof "1985".

(b) MONTHLY PAYMENTS.—Section 1153(c)(8) of such Act is amended to read as follows:

"(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.".

(c)(1) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

SEC. 739. PEER REVIEW ORGANIZATION REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS.

(a) REVIEW REQUIRED.—Section 1154(a)(1) of the Social Security Act is amended by adding at the end thereof (after and below subparagraph (C)) the following:

"Review under this paragraph shall include review of items and services under parts A and B provided by health maintenance organizations and competitive medical plans pursuant to contracts under section 1876.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contracts entered into or renewed under section 1153 of the Social Security Act on or after the date of the enactment of this Act.

SEC. 740. SUBSTITUTE REVIEW PENDING TERMINATION OF A PEER REVIEW ORGANIZATION CONTRACT.

(a) SUBSTITUTE REVIEW.—Section 1153(d) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1816 or a contract under section 1842.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 741. DENIAL OF PAYMENT FOR SUBSTANDARD CARE.

(a) DENIAL AUTHORITY FOR PRO.—Section 1154(a)(2) of the Social Security Act is amended—

(1) by striking out "subparagraphs (A) and (C)" and inserting in lieu thereof "subparagraphs (A), (B), and (C)"; and

(2) by adding at the end thereof (after and below subparagraph (D)) the following:

"Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria developed by the organization pursuant to a plan approved by the Secretary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

Subtitle B—Medicaid and Maternal and Child Health

PART 1—MEDICAID

SEC. 742. SERVICES FOR PREGNANT WOMEN.

(a) SERVICES.—Section 1902(a)(10) of the Social Security Act is amended, in the matter following subparagraph (D)—

(1) by striking out "and" before "(IV)" and inserting in lieu thereof a comma; and

(2) by inserting before the semicolon at the end thereof the following: ", and (V) the making available to pregnant women of any pregnancy-related services (including prena-

tal, delivery, or post partum services) shall not require the making available of such services, or of services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan".

(b) EXTENSION OF ELIGIBILITY.—Section 1902(e) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) At the option of the State, the State may provide that the eligibility of pregnant women for medical assistance under the State plan shall be extended for a period of 60 days after the end of such pregnancy if such eligibility would otherwise have ceased during such period, provided that such eligibility is extended for all pregnant women covered under the State plan. The State may provide that such extended eligibility be limited to services related to post partum care.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the first day of the first calendar quarter beginning after the date of the enactment of this Act.

SEC. 743. TECHNOLOGY-DEPENDENT CHILDREN.

(a) APPOINTMENT OF TASK FORCE.—The Secretary of Health and Human Services, within six months after the date of the enactment of this Act, shall establish a task force concerning alternatives to institutional care for technology-dependent children (as defined in subsection (e)).

(b) MEMBERSHIP.—The task force shall include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children.

(c) FUNCTIONS OF TASK FORCE.—The task force shall—

(1) identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children, and

(2) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

(d) REPORT.—The task force shall make a final report to the Secretary and to the Congress on its activities not later than two years after the date of the enactment of this Act.

(e) DEFINITION.—In this section, the term "technology-dependent child" means a child who has a chronic illness which makes the child dependent upon the continuing use of medical care technology (such as a ventilator).

SEC. 744. OPTIONAL HOSPICE CARE.

(a) HOSPICE CARE.—Section 1905(a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (17);

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following new paragraph:

"(18) hospice care (as defined in section 186 (dd)(1)) provided by a hospice program (as defined in section 1861(dd)(2)); and".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to services furnished on or after the date of the enactment of this Act.

SEC. 745. EXTENSION OF TEXAS LONG-TERM CARE WAIVER.

The Secretary of Health and Human Services shall continue the waiver in effect under section 1115 of the Social Security Act for the demonstration project operated by the State of Texas which provides community care alternatives for certain institutionalized individuals under the State's plan approved under title XIX of such Act (project 11-P-97473/6-06). Such waiver shall be continued until January 1, 1989.

SEC. 746. THIRD-PARTY LIABILITY.

(a) AMENDMENTS TO STATE PLAN REQUIREMENTS.—(1) Section 1902(a)(25) of the Social Security Act is amended to read as follows:

"(25) provide—

"(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for care and services available under the plan, including—

"(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

"(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall—

"(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval system under section 1903(r), and

"(II) be subject to the provisions of section 1903(r)(4) relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirement;

"(B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B);

"(C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

"(D) that in the case of an individual who is entitled to medical assistance under a State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1916), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under section 1916, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1916) exceeds the total of the amount of the liabilities of third parties for that service; and

"(E) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;".

(2) Section 1902 of such Act is amended by inserting after subsection (f) the following new subsection:

"(g) In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(D).".

(b) PERFORMANCE STANDARDS AND REVIEW FOR MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS.—(1) Section 1903(r)(6)(J) of such Act is amended by read as follows:

"(J) develop and disseminate performance standards for assessing the State's third party collection efforts in accordance with section 1902(a)(25)(A)(ii).".

(2) Section 1903(r)(4)(A) of such Act is amended—

(A) by striking out "once each fiscal year" and inserting in lieu thereof "once every three years"; and

(B) by adding at the end thereof the following: "Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.".

(c) REGULATIONS.—The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act within 6 months after the date of the enactment of this Act.

(d) ERISA AMENDMENT.—Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by adding at the end thereof the following new subsection:

"(d) No employee benefit plan shall limit or exclude benefits because a participant is eligible for or is provided medical assistance under a State plan under title XIX of the Social Security Act.".

(e) CONDITIONS OF ELIGIBILITY.—(1) Section 1912(a)(1) of the Social Security Act is amended by striking out "and" at the end of subparagraph (A), and by adding at the end thereof the following new subparagraph:

"(C) to cooperate with the State in identifying and pursuing any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and".

(2) Section 402(a)(26) of such Act is amended—

(A) by striking out the comma at the end of subparagraph (A) and inserting in lieu thereof "; and"; and

(B) by adding at the end thereof the following new subparagraph:

"(C) to cooperate with the State in identifying and pursuing any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved;".

(3) Section 1631(e)(1)(A) of such Act is amended by adding at the end thereof the following: "Such requirements shall include a requirement that each applicant or recipient shall cooperate with the Secretary in identifying and pursuing any third party who may be liable to pay for care and services available under the State plan for medi-

cal assistance (of the State in which such individual resides) under title XIX, unless such individual has good cause for refusing to cooperate as determined under standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved. The Secretary shall take all reasonable measures to ascertain any such liability.".

(4) Section 1634 of such Act is amended by inserting after "title XIX" the following: ", including the collecting and forwarding of information with respect to third party liability as required under section 1631(e)(1)(A).".

(f) DISREGARD FROM ERRONEOUS PAYMENTS.—Section 1903(u)(1)(D) of such Act is amended by adding at the end thereof the following new clause:

"(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third party liability as required under section 1912(a)(1)(C), 402(a)(26)(C), or 1631(e)(1)(A).".

(g) EFFECTIVE DATE.—(1) Except as otherwise provided, the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 1985.

(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 in order for the plan to meet the additional requirements imposed by the amendments made by this section, 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.

(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act occurring prior to the effective date of the amendments made by this section.

(4) The amendment made by subsections (c) and (d) shall become effective on the date of the enactment of this Act.

SEC. 747. OPTIONAL TARGETED CASE MANAGEMENT SERVICES.

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—Section 1915 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(g)(1) A State may provide case management services under the plan without regard to the requirements of section 1902(a)(1) and section 1902(a)(10).

"(2) For purposes of this subsection, the term 'case management services' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after October 1, 1985.

SEC. 748. REVALUATION OF ASSETS UNDER MEDICAID PROGRAM.

(a) REVALUATION OF ASSETS.—Section 1902(a)(13) of the Social Security Act is amended—

(1) in subparagraph (B), by striking out "hospitals, skilled nursing facilities, and intermediate care facilities" and inserting in lieu thereof "hospitals";

(2) by striking out "and" at the end of subparagraph (B);

(3) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for skilled nursing facilities and intermediate care facilities, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

"(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

"(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

(3) 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 in order for the plan to meet the requirements imposed by the amendments made by this section, 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 the requirements imposed by the amendments made by this section 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.

(c) GAO STUDY.—The Comptroller General shall conduct a study of the effects of the amendments made by this section, and shall report the results of such study to the Congress two years after the date of the enactment of this Act.

SEC. 749. BEGINNING DATE OF OPTIONAL COVERAGE FOR INDIVIDUALS IN MEDICAL INSTITUTIONS.

(a) COVERAGE.—Section 1902(a)(10)(A)(ii)(V) of the Social Security Act is amended by inserting "for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)" after "are in a medical institution".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to payment for services furnished on or after October 1, 1985.

SEC. 750. OPTIONAL COVERAGE OF CHILDREN.

(a) STATE OPTION.—Section 1905(n)(2) of the Social Security Act is amended by inserting "(or such earlier date as the State may designate)" after "September 30, 1983".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1986.

SEC. 751. OVERPAYMENT RECOVERY RULES.

(a) OVERPAYMENT RECOVERY.—Section 1903(d)(2) of the Social Security Act is amended—

(1) by inserting "(A)" after "(2)";

(2) by designating the second sentence as subparagraph (B), properly indented and aligned below subparagraph (A); and

(3) by adding at the end thereof the following new subparagraphs:

"(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

"(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).".

(b) EFFECTIVE DATE.— The amendments made by this section shall apply to overpayments identified for quarters beginning on or after October 1, 1985.

SEC. 752. WAIVER EXTENSIONS FOR HOME AND COMMUNITY-BASED SERVICES.

The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act which expires on or after September 30, 1985, and before October 1, 1986. Such extension shall be for a period of not less than one year nor more than five years.

SEC. 753. WAIVER RENEWALS FOR HOME AND COMMUNITY-BASED SERVICES.

(a) RENEWAL TERMS.—Section 1915(c)(3) of the Social Security Act is amended—

(1) by striking out "additional three-year periods" and inserting in lieu thereof "additional five-year periods"; and

(2) by striking out "previous three-year period" and inserting in lieu thereof "previous waiver period".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on September 30, 1986.

SEC. 754. COORDINATED SERVICES BETWEEN MCH PROGRAM AND HOME AND COMMUNITY-BASED SERVICE PROGRAMS.

(a) IN GENERAL.—Section 1915(c) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5) The State agency administering the plan under this title shall, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under title V. Such arrangements shall provide that—

"(A) individuals under 18 years of age eligible for home or community-based care under a waiver granted in accordance with this subsection shall be referred to such State title V agency; and

"(B) the State title V agency shall assure—

"(i) the establishment of an individual service plan for the child;

"(ii) the designation of a case manager to assist the family in carrying out the plan; and

"(iii) the monitoring of the utilization, quality, and costs of services provided for appropriateness and reasonableness.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 755. EXPANSION OF SERVICES UNDER WAIVER AUTHORITY.

(a) INCREASE IN NUMBER OF SERVICES.—Section 1915(b) of the Social Security Act is amended—

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

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D); and

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

"(2) The Secretary may waive the requirements of section 1903(m)(2)(A) with respect to an entity providing services under the State's waiver under this subsection if such entity does not provide more than 5 of the services listed in section 1903(m)(2)(A), and does not provide inpatient hospital services.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 756. LIFE SAFETY CODE RECOGNITION.

For purposes of sections 1861(j)(13) and 1905(c) of the Social Security Act, the Secretary of Health and Human Services shall specify the 1985 edition of the Life Safety Code of the National Fire Protection Association until such time as a new edition is published.

SEC. 757. REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act within 60 days after the date of the enactment of this Act.

SEC. 758. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

(a) WAIVING APPLICATION OF 75 PERCENT RULE AND CERTAIN ORGANIZATIONAL REQUIREMENTS.—Section 1903(m)(2) of the Social Security Act is amended—

(1) in subparagraph (A), by striking out "(B) and (C)" and inserting in lieu thereof "(B), (C), and (G)";

(2) in subparagraph (F)—

(A) by striking out "(F)(i) In the case of a contract with a health maintenance organization described in clause (ii)" and inserting in lieu thereof "(F) in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii)";

(B) by striking out "such organization" and inserting in lieu thereof "such entity or organization"; and

(C) by striking out clause (ii); and

(3) by adding at the end thereof the following new subparagraph:

"(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, clauses (i) and (ii) of subparagraph (A) shall not apply.".

(b) PERMITTING 6-MONTH CONTINUATION OF BENEFITS.—Section 1902(e)(2) of such Act is amended—

(1) in subparagraph (A)—

(A) by inserting "or with an entity described in section 1903(m)(2)(G)" after "Public Health Service Act)"; and

(B) by inserting "or entity" before the period; and

(2) in subparagraph (B)—

(A) by striking out "a health maintenance organization" and inserting in lieu thereof "an organization or entity"; and

(B) by inserting "or entity" after "the organization".

SEC. 759. ANNUAL CALCULATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) ANNUAL CALCULATION.—Section 1101(a)(8)(B) of the Social Security Act is amended—

(1) by striking out "evennumbered"; and

(2) by striking out "eight quarters" and inserting in lieu thereof "four quarters".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to the Federal percentage for fiscal years 1988 and thereafter.

SEC. 759A. USE OF SAMPLING FOR REVIEW OF MENTAL HOSPITALS, SKILLED NURSING FACILITIES, AND INTERMEDIATE CARE FACILITIES.

(a) USE OF SAMPLING.—(1) Section 1902(a)(26)(B) of the Social Security Act is amended by inserting "(or, as permitted by the Secretary, each person in a sample group of individuals receiving medical assistance)" after "each person receiving medical assistance".

(2) Section 1902(a)(31)(B) of such Act is amended by inserting "(or, as permitted by the Secretary, each person in a sample group of individuals receiving medical assistance)" after "each person receiving medical assistance".

(3) Section 1903(g)(1) of such Act is amended by inserting "(or, as permitted by the Secretary, each case in a sample group)" after "each case".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to surveys in progress or begun after the date of the enactment of this Act.

SEC. 759B. WISCONSIN HEALTH MAINTENANCE ORGANIZATION WAIVER.

The waiver granted to the State of Wisconsin pursuant to section 1915(b) of the Social Security Act relating to the requirements of section 1903(m) of such Act in conjunction with a waiver of the requirements of section 1902(a)(23) of such Act shall, upon request by the State, be reinstated, and shall be renewable for terms of 2 years, subject to the showings required generally under section 1915(b) of such Act.

SEC. 759C. CLARIFICATION OF MEDICAID MORATORIUM PROVISIONS OF DEFICIT REDUCTION ACT OF 1984.

(a) CLARIFICATION.—Section 2373(c) of the Deficit Reduction Act of 1984 is amended—

(1) in paragraph (1)—

(A) by inserting "(whether or not approved)" after "such State's plan",

(B) by inserting "(including any part of the plan operating pursuant to section 1902(f) of that Act), or the operation thereunder," after "Social Security Act", and

(C) by inserting "(or its operation's)" after "such plan's"; and

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

"(5) In this subsection, a State plan is considered to include any amendment or other change in the plan which is submitted by a State, or for which the Secretary otherwise has notice, whether before or after the date of enactment of the Deficit Reduction Act of 1984 and whether or not the amendment or change was approved, disapproved, acted upon, or not acted upon by the Secretary.".

(b) SALE OF HOME.—Section 2373(c) of the Deficit Reduction Act of 1984 is further amended by adding at the end thereof the following new paragraph:

"(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

"(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

"(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).".

(c) EFFECTIVE DATES.—The amendments made by this section shall apply as though they were included in the Deficit Reduction Act of 1984 as originally enacted.

SEC. 759D. HOME AND COMMUNITY-BASED SERVICES DEMONSTRATIONS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall allow four States (to be selected by the Secretary) to conduct demonstration projects to determine whether, and to what extent, State controlled home and community-based service programs for elderly, disabled, and developmentally disabled individuals, who are eligible under the State's plan approved under title XIX of the Social Security Act, can reduce expenditures for the society as a whole, for the Federal Government, and for the States.

(b) DURATION.—Each demonstration project shall be for a period of three years.

(c) MEDICAID EXPENDITURE LEVELS.—Expenditures under the demonstration projects shall exceed the amounts which would otherwise be expended under the States' plans under title XIX of the Social Security Act for services provided to the same individuals by not less than $85,000,000 nor more than $88,000,000 for all four projects over the 3-year period of the projects. Such additional amounts may be used to provide additional services such as habilitative services not otherwise covered under the State plan, or care provided in small facilities not otherwise eligible for payments under such plan, but all standards for quality of care otherwise applicable under the State plan shall apply.

(d) STATES SELECTED.—In selecting the four States to carry out the demonstration projects, the Secretary shall select programmatically and demographically disparate States.

(e) EVALUATION.—The Secretary shall evaluate the demonstration projects and submit a preliminary report during the third year of the projects. Such evaluation shall be funded at a level of not less than $1,500,000 nor more than $2,000,000.

SEC. 759E. PARTICIPANTS UNDER HOME AND COMMUNITY-BASED SERVICES WAIVERS.

(a) REPLACEMENT OF PARTICIPANTS.—Section 1915(c) of the Social Security Act (as amended by section 754 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(6) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 759F. NEW JERSEY DEMONSTRATION PROJECT RELATING TO TRAINING OF AFDC RECIPIENTS AS HOME HEALTH AIDES.

The Secretary of Health and Human Services shall continue for one additional year the demonstration project conducted by the State of New Jersey pursuant to section 966 of the Omnibus Reconciliation Act of 1980. Federal matching for such demonstration project shall be 50 percent.

SEC. 759G. CORRECTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

(a) CORRECTION PLANS.—Section 1910(c) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(3)(A) If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents, the State may elect to submit a written plan of correction which details the extent of the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey. The plan must provide for—

"(i) a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

"(ii) a timetable (which includes the information required by subparagraph (B)) for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected.

"(B) A timetable under subparagraph (A)(ii) must—

"(i) identify the number and service needs of existing facility residents to be placed in home or community alternatives and the sequencing of such placements, in 6 month intervals, within the 36-month period;

"(ii) describe the methods to be used to select such residents for placement and develop the home and community-based resources to meet their needs effectively; and

"(iii) describe the necessary safeguards that will be taken to protect the health and welfare of former residents that are placed in home or community-based alternatives, including adequate standards for consumer and provider participation and assurances that applicable State licensure and certification requirements will be met in such home or community facilities and programs.

"(C) If the Secretary at the conclusion of the initial 6 month period, or any subsequent 6 month period in the case of a plan described in subparagraph (A)(ii), finds that a State has substantially failed to meet its obligations under clause (i) or (ii) of subparagraph (A)—

"(i) the Secretary may terminate the facility's provider agreement in accordance with the provisions of paragraph (1); or

"(ii) if the State elected to reduce the number of facility residents in accordance with subparagraph (A)(ii) and the Secretary subsequently finds that, despite good faith efforts to execute its reduction plan, the State has failed to meet its interim reduction goals, the Secretary may disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the institution for each month for which the State fails to meet its interim reduction or other plant and staffing goals.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

PART 2—MATERNAL AND CHILD HEALTH

SEC. 759H. ELIMINATION OF TWO-YEAR LIMIT FOR OBLIGATION OF FUNDS UNDER MATERNAL AND CHILD HEALTH BLOCK GRANT.

(a) ELIMINATION OF LIMIT.—Section 503(b) of the Social Security Act is amended by striking out "during the next fiscal year" and all that follows, and inserting in lieu thereof "during any subsequent fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 759I. CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

(a) Section 501(a)(4) of the Social Security Act is amended by striking out "children who are crippled or who are suffering from conditions leading to crippling" and inserting in lieu thereof "children who are 'children with special health care needs' or who are suffering from conditions leading to such status".

(b) Section 501(a) of such Act is amended by striking out "crippled children" in the matter following paragraph (4) and inserting in lieu thereof "children with special health care needs".

(c) Section 501(b)(1)(A) of such Act is amended by striking out "crippled children's services" and inserting in lieu thereof "services for children with special health care needs".

(d) Section 502(a)(2)(B) of such Act is amended—

(1) by striking out "crippled children's programs" and inserting in lieu thereof "programs for children with special health care needs"; and

(2) by striking out "crippled children's services" and inserting in lieu thereof "services for children with special health care needs".

(e) Sections 504(b)(1) and 509(b) of such Act are each amended by striking out "crippled children" and inserting in lieu thereof "children with special health care needs".

Subtitle C—OASDI

SEC. 760. DEMONSTRATION PROJECTS INVOLVING THE DISABILITY INSURANCE PROGRAM.

(a) EXTENSION OF WAIVER AUTHORITY.—Section 505(a)(3) of the Social Security Disability Amendments of 1980 is amended by inserting "which is initiated before June 10, 1990" after "demonstration project under paragraph (1)".

(b) INTERIM REPORTS.—Section 505(a)(4) of such Amendments is amended to read as follows:

"(4) On or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.".

(c) FINAL REPORT.—Section 505(c) of such Amendments is amended by striking out "under this section no later than five years after the date of the enactment of this Act" and inserting in lieu thereof "under subsection (a) no later than June 9, 1990".

(d) INCORPORATION OF CERTAIN REPORTS INTO SECRETARY'S ANNUAL REPORT TO CONGRESS.—Section 1110(b) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(3) All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 704.".

SEC. 761. DISABILITY ADVISORY COUNCIL.

(a) APPOINTMENT OF COUNCIL.—Within ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services shall appoint a special Disability Advisory Council.

(b) MEMBERSHIP OF COUNCIL.—The Disability Advisory Council shall consist of a Chairman and not more than twelve other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or from both such sectors), organizations representing disabled people, and the public. The Council shall meet as often as may be necessary for the performance of its duties under this section, but not less often than quarterly.

(c) DUTIES OF COUNCIL.—(1) The Advisory Council shall conduct studies and make recommendations with respect to the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the appropriate State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(d) PROVISION OF ASSISTANCE TO COUNCIL; COMPENSATION OF MEMBERS.—(1) The Disability Advisory Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary of Health and Human Services shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out such functions.

(2) Appointed members of the Council, while serving on business of the Council (inclusive of traveltime), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(e) REPORTS.—The Disability Advisory Council shall submit a report (including any interim reports the Council may have issued) of its findings and recommendations to the Secretary of Health and Human Services not later than December 31, 1986; and such report and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

(f) TERMINATION.—After the date of the transmittal to the Congress of the report required by subsection (e), the Disability Advisory Council shall cease to exist.

(g) CONFORMING AMENDMENTS.—(1) Section 706 of the Social Security Act is amended—

(A) by inserting "except as provided in subsection (e)," immediately before "the Secretary shall appoint" in subsection (a); and

(B) by adding at the end thereof the following new subsection:

"(e) No Advisory Council on Social Security shall be appointed under subsection (a) in 1985 (or in any subsequent year prior to 1989).".

(2) Section 12 of the Social Security Disability Benefits Reform Act of 1984 is repealed.

SEC. 762. TAXATION OF SOCIAL SECURITY BENEFITS RECEIVED BY CERTAIN CITIZENS OF POSSESSIONS OF THE UNITED STATES.

(a) GENERAL RULE.—Section 932 of the Internal Revenue Code of 1954 (relating to citizens of possessions of the United States) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAXATION OF SOCIAL SECURITY BENEFITS.—If, for purposes of an income tax imposed in the possession, any social security benefit (as defined in section 86(d)) received by an individual described in subsection (a) is treated in a manner equivalent to that provided by section 86, then—

"(1) such benefit shall be exempt from the tax imposed by section 871, and

"(2) no amount shall be deducted and withheld from such benefit under section 1441.

Any income tax imposed in a possession which treats social security benefits (as defined in section 86(d)) in a manner equivalent to section 86, and which first becomes effective within 15 months after the date of the enactment of this subsection, shall, for purposes of this section, be deemed to have been in effect as of January 1, 1984.".

(b) CROSS REFERENCE.—Paragraph (3) of section 871(a) of such Code is amended by adding at the end thereof (after and below subparagraph (B)) the following new sentence:

"For treatment of certain citizens of possessions of the United States, see section 932(c)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

SEC. 763. APPLICATION OF DEPENDENCY TEST TO ADOPTED GREAT-GRANDCHILDREN FOR PURPOSES OF CHILD'S INSURANCE BENEFITS.

(a) TREATMENT OF GRANDCHILDREN AND GREAT-GRANDCHILDREN ALIKE.—Section 202(d)(8)(D)(ii)(III) of the Social Security Act is amended by inserting "or great-grandchild" after "grandchild".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for which application is filed after the date of the enactment of this Act.

SEC. 764. ELIMINATION OF REQUIREMENT FOR PUBLICATION OF REVISIONS IN PRE-1979 BENEFIT TABLE.

Section 215(i)(4) of the Social Security Act is amended by striking out "the Secretary shall publish" and all that follows in the last sentence and inserting in lieu thereof the following: "the Secretary shall revise the table of benefits contained in subsection (a), as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.".

SEC. 765. FORMULA CLARIFICATION.

Section 709(b)(1) of the Social Security Act is amended to read as follows:

"(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 201(a) on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), to".

SEC. 766. EXTENSION OF 15-MONTH REENTITLEMENT PERIOD TO CHILDHOOD DISABILITY BENEFICIARIES SUBSEQUENTLY ENTITLED.

(a) IN GENERAL.—Section 202(d)(6)(E) of the Social Security Act is amended by striking out "the third month following the month in which he ceases to be under such disability" and inserting in lieu thereof "the termination month (as defined in paragraph (1)(G)(i))", subject to section 223(e),".

(b) CONFORMING AMENDMENT.—Section 223(e) of such Act is amended by inserting "(d)(6)(A)(ii), (d)(6)(B)," after "(d)(1)(B)(ii),".

(c) EFFECTIVE DATE.—The amendments made by this section are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act) on or after that date.

SEC. 767. CHARGING OF WORK DEDUCTIONS AGAINST AUXILIARY BENEFITS IN DISABILITY CASES.

(a) IN GENERAL.—(1) Section 203(a)(4) of the Social Security Act is amended by striking out "preceding" in the first sentence.

(2) Section 203(a)(6) of such Act is amended—

(A) by striking out "and (5)" and inserting in lieu thereof "(4), and (5)"; and

(B) by striking out ", whether or not" and all that follows down through "further reduced" and inserting in lieu thereof "shall be reduced".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after December 1985.

SEC. 768. PERFECTING AMENDMENTS TO DISABILITY OFFSET PROVISION.

(a) IN GENERAL.—(1) Section 224(a)(2) of the Social Security Act is amended to read as follows:

"(2) such individual is entitled for such month to—

"(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

"(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and (iv) benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,".

(2) Section 224(a)(2)(B) of such Act (as amended by paragraph (1) of this subsection) is further amended by striking out "all or part of which" in clause (iv) and inserting in lieu thereof "all or substantially all of which".

(b) EFFECTIVE DATES.—(1) The amendment made by subsection (a)(1) shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981.

(2) The amendment made by subsection (a)(2) shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act) after the month in which this Act is enacted.

SEC. 769. STATE COVERAGE AGREEMENTS.

(a) MAXIMUM PERIOD OF RETROACTIVE COVERAGE.—Section 218(f)(1) of the Social Security Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(b) POSITIONS COMPENSATED SOLELY ON FEE BASIS.—Section 218(u)(3) of such Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act) on or after the date of the enactment of this Act.

SEC. 769A. EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.

(a) FOR OASDI PURPOSES.—Section 708 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) For purposes of computing the 'OASDI trust fund ratio' under section 201(l), the 'OASDI fund ratio' under section 215(i), and the 'balance ratio' under section 709(b), benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section

shall be deemed to have been delivered on the regularly designated delivery date.".

(b) FOR INCOME TAX PURPOSES.—Section 86(d) of the Internal Revenue Code of 1954 (relating to taxation of social security and tier 1 railroad retirement benefits) is amended by adding at the end thereof the following new paragraph:

"(5) EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.—For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act.

SEC. 769B. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended—

(1) by inserting "(a)" after "SEC. 1634.", and

(2) by adding at the end the following new subsection:

"(b)(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 202(e) or (f) but is not eligible for benefits under this title in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of title XIX to be an individual with respect to whom benefits under this title are paid in that month if he or she—

"(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

"(B) would be eligible for benefits under this title in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustment in such benefits under section 215(i), were disregarded.

"(2) For purposes of paragraph (1), the term 'eligible disabled widow or widower' means an individual who—

"(A) was entitled to a monthly insurance benefit under title II for December 1983,

"(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 202(e) or (f) for January 1984 and with respect to whom a benefit under this title was paid in that month, and

"(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98-21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this title in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

"(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Secretary may prescribe, during the 15-month period beginning with the month in which this subsection is enacted.

"(4) For purposes of this subsection, the term 'benefits under this title' includes payments of the type described in section 1616(a) or of the type described in section 212(a) of Public Law 93-66.".

(b) IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.

(2) Each State shall—

(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

(B) solicit their applications for such assistance, and

(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.

(c) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act.

SEC. 769C. EXEMPTION FROM SOCIAL SECURITY COVERAGE FOR RETIRED FEDERAL JUDGES ON ACTIVE DUTY.

(a) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209 of the Social Security Act is amended in the third to the last paragraph thereof (added by section 101(c)(1) of the Social Security Amendments of 1983) by striking out "shall, subject to the provisions of subsection (a) of this section, include" and inserting in lieu thereof "shall not include".

(b) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(i)(5) of the Internal Revenue Code of 1954 is amended by striking out "shall, subject to the provisions of subsection (a)(1) of this section, include" and inserting in lieu thereof "shall not include".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to service performed after December 31, 1983.

SEC. 769D. RECOVERY OF OVERPAYMENTS.

(a) OASDI PAYMENTS.—Section 204(a) of the Social Security Act is amended—

(1) by inserting "(1)" after "204(a)";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

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

"(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

"(A) is made by direct deposit to a financial institution;

"(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

"(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.".

(b) SSI PAYMENTS.—Section 1631(b) of the Social Security Act is amended by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), and by inserting after paragraph (1) the following new paragraph:

"(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

"(A) is made by direct deposit to a financial institution;

"(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

"(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this title (including any State supplementation payment paid by the Secretary) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act.

SEC. 769E. STUDY OF BENEFIT FORMULA NOTCH.

(a) STUDY BY PANEL.—(1) The Secretary of Health and Human Services shall appoint a special panel to conduct studies with respect to the so-called "notch" under the present formula (established by the Social Security Amendments of 1977) for determining primary insurance amounts under title II of the Social Security Act, including studies relating to—

(A) the extent to which inequities are actually resulting from the implementation of such formula;

(B) the nature and desirability of the actions that might be taken to correct any inequities which are found to exist; and

(C) the effect that any such actions would have upon the short- and long-term financial condition of the social security trust funds and upon the state of the national economy generally.

(2) In carrying out its duties under paragraph (1), the special panel shall consult with such outside experts as it may consider appropriate.

(b) REPORT.—The Secretary shall submit a report of the findings and recommendations of the special panel to the Senate Committee on Finance and the House Committee on Ways and Means not later than December 15, 1986.

SEC. 769F. GENERAL EFFECTIVE DATE.

Except as otherwise specifically provided, this subtitle and the amendments made by this subtitle shall take effect on the first day of the month following the month in which this Act is enacted.

SEC. 769G. RESTORATION OF TRUST FUND INVESTMENTS.

(a) REISSUANCE OF OBLIGATIONS.—The Secretary of the Treasury shall immediately reissue to the Social Security Trust Funds and other retirement funds (as defined in subsection (d)) obligations under chapter 31 of title 31, United States Code, identical in all terms to public debt obligations redeemed on or after September 1, 1985, and on or before the date of the enactment of this Act that as determined by the Secretary on the basis of standard investment procedures for such funds in effect on September 1, 1985, would not have been redeemed if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on

August 1, 1985. The uninvested balances of such funds shall be debited for the principal amount of such reissued obligations.

(b) APPROPRIATION TO TRUST FUNDS OF LOST INTEREST.—(1) The Secretary of the Treasury shall pay to the Social Security Trust Funds and other retirement funds (as defined in subsection (d)), from amounts in the general fund of the Treasury not otherwise appropriated, amounts determined, in accordance with paragraph (2), to be equal to the net amount of interest that would have accrued to each such fund but for noninvestments, redemptions, and disinvestments of such funds—

(A) on or after September 1, 1985, and on or before the date of the enactment of this Act that would not have occurred if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985, taking into account the reissuance of obligations as required by subsection (a); and

(B) on or after September 1, 1984, and prior to September 1, 1985, that would not have occurred but for limitations on the public debt, based on the present value of the permanent loss of such interest.

(2)(A) The determination of the amount of interest which would have accrued to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund shall be made jointly by the Secretary of the Treasury and the Commissioner of Social Security, and must be certified as accurate by the two public members of the Board of Trustees of the Trust Funds and by the Comptroller General.

(B) The determination of the amount of interest which would have accrued to the Railroad Retirement Account shall be made jointly by the Secretary of the Treasury and the Chairman of the Railroad Retirement Board, and must be certified as accurate by the Comptroller General.

(C) The determination of the amount of interest which would have accrued to the Civil Service Retirement and Disability Fund and the Department of Defense Military Retirement Fund shall be made by the Secretary of the Treasury, and must be certified as accurate by the Comptroller General.

(3) The payment required by paragraph (1) shall be made on June 30, 1986. Prior to April 1, 1986, the officials required to make all determinations under paragraph (2) shall do so, and shall report to the Congress any disagreements. The Comptroller General and the public members of the Board of Trustees of the Trust Funds shall report to the Congress any such determinations which they do not certify as being accurate, along with an explanation of why they do not certify such determination.

(c) NOTIFICATION OF DISINVESTMENT PLANS.—(1) The Secretary of the Treasury (as Managing Trustee of the Social Security Trust Funds) shall notify each member of the Board of Trustees of such Trust Funds, the Chairman of the House Committee on Ways and Means, and the Chairman of the Senate Committee on Finance, of any planned action, taken by reason of the limitation on the public debt, to—

(A) redeem or to disinvest any long-term bond held by the Trust Funds (specifying the amount, rate of interest, and date of redemption of each bond); or

(B) not make normalized tax transfers or not invest normalized tax transfers in interest bearing obligations, as required under sections 201, 1817, and 1841 of the Social Security Act.

(2) Notice under this subsection shall be made not less than 15 days prior to the planned action, and shall include an explanation of the necessity for the action.

(d) DEFINITION.—For purposes of this section, the term "Social Security Trust Funds and other retirement funds" means the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Federal Supplementary Medical Insurance Trust Fund, the Railroad Retirement Account, the Civil Service Retirement and Disability Fund, and the Department of Defense Military Retirement Fund.

SEC. 769H. COVERAGE OF CONNECTICUT STATE POLICE.

Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

Subtitle D—AFDC, SSI, Adoption Assistance, Foster Care, and Unemployment Compensation

SEC. 770. QUALITY CONTROL STUDIES AND PENALTY MORATORIUM.

(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act and for the Medicaid Program under title XIX of such Act. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date of the enactment of this Act.

(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act (hereafter in this section referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) or 1903(u) of the Social Security Act, or pursuant to any comparable provision of law relating to the programs under titles IV-A and XIX of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under titles IV-A and XIX of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 18 months after the date of the enactment of this Act, the Secretary shall publish regulations which shall—

(A) restructure the quality control systems under titles IV-A and XIX of the Social Security Act to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems, and shall reduce payments to States—

(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

SEC. 771. AFDC AUTOMATION REQUIREMENTS.

(a) IN GENERAL.—Section 402(e)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) If the Secretary determines that such a system has not been implemented by the State by the date specified for implementation in the State's advance automatic data processing planning document, then the Secretary shall reduce payments to such State, in accordance with section 403(b), in an amount equal to 40 percent of the expenditures referred to in section 403(a)(3)(B) with respect to which payments were made to the State under section 403(a)(3)(B). The Secretary may extend the deadline for implementation if the State demonstrates to the satisfaction of the Secretary that the State cannot implement such system by the date specified in such planning document due to circumstances beyond the State's control.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of the enactment of this Act, but shall apply only with respect to sums expended by the States for the purposes described in section 403(a)(3)(B) of the Social Security Act on or after the date of the enactment of this Act.

SEC. 772. TREATMENT OF PER CAPITA PAYMENTS TO INDIANS.

(a) IN GENERAL.—Section 7 of the Act of October 19, 1973 (25 U.S.C. 1407) is amended by striking out "taxes, nor shall" and all that follows, and inserting in lieu thereof the following: "taxes. Such funds and their availability shall not be considered as income or resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under a program established by or pursuant to the Social Security Act or any other Federal or federally assisted program, except so much of such funds as exceed (in the aggregate) $2,000 per year per family unit (or other relevant unit applicable under the program involved) and which are paid as per capita shares.".

(b) REGULATIONS.—Each department or agency which issues regulations for the pur-

pose of implementing the amendment made by subsection (a) shall, to be extent feasible, coordinate such regulations with those of the other such departments and agencies so as to avoid inconsistent requirements relating to such amendment and inappropriate duplicative counting of such income.

(c) EFFECTIVE DATE.—The amendment made by this section shall become effective on January 1, 1986.

SEC. 773. SSI PASSTHROUGH RELATING TO STATE SUPPLEMENTATION.

(a) RESTORATION OF STATE OPTION IN COMPLYING WITH PASSTHROUGH REQUIREMENTS.—Section 1618(e)(1) of the Social Security Act is amended by striking out "a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) shall be treated as meeting such requirements if and only if" and inserting in lieu thereof "a State shall be deemed to have met the requirements of paragraph (4) of subsection (a) if".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months after March 1983.

SEC. 774. PROVISIONS RELATING TO MEDICAID COVERAGE UNDER THE ADOPTION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 473(b) of the Social Security Act is amended to read as follows:

"(b) For purposes of title XIX, any child—

"(1) who is a child described in subsection (a)(1); and

"(2) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued);

shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title in the State where such child resides.".

(b) CONFORMING AMENDMENTS.—(1) Section 473(c)(2) of such Act is amended—

(A) by striking out "without providing adoption assistance" in clause (A) and inserting in lieu thereof "without providing adoption assistance under this section or medical assistance under title XIX"; and

(B) by inserting "or medical assistance under title XIX" before the period at the end thereof.

(2) Section 475(3) of such Act is amended by striking out "the adoption assistance payments and any additional services and assistance" in clause (A) of the first sentence and inserting in lieu thereof "any adoption assistance payments and any other services and assistance".

(3) Section 1902(a)(10)(A)(i)(I) of such Act is amended by striking out "or 406(h)" and inserting in lieu thereof ", 406(h), or 473(b)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1985.

SEC. 775. EXTENSION OF VOLUNTARY PLACEMENT, AND CEILING AND TRIGGER PROVISIONS, RELATING TO FOSTER CARE.

(a) Section 474(b) of the Social Security Act is amended—

(1) in paragraphs (1), (2)(B), and (4)(B), by striking out "1985" and inserting in lieu thereof "1987";

(2) in paragraph (2)(A)—

(A) by inserting "and" at the end of clause (ii), and

(B) by striking out clauses (iii), (iv), and (v) and inserting in lieu thereof the following:

"(iii) with respect to each of the fiscal years 1983 through 1987, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000."; and

(3) in paragraph (5)(A)—

(A) by striking out "October 1, 1985" and inserting in lieu thereof "October 1, 1987", and

(B) in clause (ii), by striking out "1984 and 1985" and inserting in lieu thereof "1984 through 1987".

(b) Paragraphs (1) and (2) of section 474(c) of such Act are each amended by striking out "1985" and inserting in lieu thereof "1987".

(c)(1) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) is amended by striking out "1985" and inserting in lieu thereof "1987".

(2) Section 102(c) of such Act is amended by striking out "1985" each place it appears and inserting in lieu thereof "1987".

SEC. 776. INDEPENDENT LIVING INITIATIVES.

(a) INDEPENDENT LIVING INITIATIVES.—Part E of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"INDEPENDENT LIVING INITIATIVES

"SEC. 477. (a) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16, in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e). Such payments shall be made only for the fiscal years 1986 and 1987.

"(b) The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a). Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private nonprofit organizations) the activities and services required to carry out the program or programs involved.

"(c) In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1986, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i), and in the case of payments for fiscal year 1987, such description and assurances must be submitted prior to January 1, 1987.

"(d) In carrying out the purpose described in subsection (a), it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to—

"(1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;

"(2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;

"(3) provide for individual and group counseling;

"(4) integrate and coordinate services otherwise available to participants;

"(5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;

"(6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 475(1); and

"(7) provide participants with other services and assistance designed to improve their transition to independent living.

"(e)(1) The amount to which a State shall be entitled under section 474(a)(4) for each of the fiscal years 1986 and 1987 shall be an amount which bears the same ratio to $45,000,000 as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

"(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c), the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

"(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 474, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved.

"(f) Payments made to a State under this section for any fiscal year—

"(1) shall be used only for the specific purposes described in this section;

"(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

"(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

"(g)(1) Not later than March 1, 1987, each State shall submit to the Secretary a report on the programs carried out with the amounts received under this section. Such report—

"(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a); and

"(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

"(2) Not later than July 1, 1987, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal year 1986, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the

programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

"(h) Notwithstanding any other provision of this title, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 402 or 471, or for purposes of determining the level of such aid.

"(i) The Secretary shall promulgate final regulations for implementing this section within 60 days after the date of the enactment of this section.".

(b) CASE PLANS.—Section 475(1) of such Act is amended by adding at the end thereof the following: "Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.".

(c) PAYMENTS TO STATES.—Section 474(a) of such Act is amended—

(1) by striking out the period at the end of subparagraph (3) and inserting in lieu thereof "; plus"; and

(2) by adding at the end thereof the following new subparagraph:

"(4) an amount for transitional independent living programs as provided in section 477.".

(d) CONFORMING AMENDMENT.—Section 470 of such Act is amended by striking out "foster care and adoption assistance" and inserting in lieu thereof "foster care, adoption assistance, and transitional independent living programs".

SEC. 776A. RECOVERY OF UNEMPLOYMENT BENEFITS OVERPAYMENTS.

(a) IN GENERAL.—(1) Section 303(a)(5) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: ": Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g)".

(2) Section 303 of such Act is amended by adding at the end thereof the following new subsection:

"(g)(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

"(2) Any State may enter into an agreement with the Secretary of Labor under which—

"(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

"(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

"(3) For purposes of this subsection, 'unemployment benefits' means unemployment compensation, trade adjustment allowances, and other unemployment assistance.".

(b) CONFORMING AMENDMENT.—Section 3304(a)(4) of the Internal Revenue Code of 1954 is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by adding "and" at the end of subparagraph (C); and

(3) by adding at the end thereof the following new subparagraph:

"(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to recoveries made on or after October 1, 1985, and shall apply with respect to overpayments made before, on, or after such date.

Subtitle E—Customs Fees

SEC. 777. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) In addition to any other fees authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial vessel of less than 100 net tons, $25.

(3) For the arrival of a commercial truck, $5.

(4) For the arrival of each railroad car, whether passenger or freight, $5.

(5) For each arrival made by a private vessel or private aircraft, $25.

(6) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)), $5.

(7) For each informal entry for which a document is prepared by a customs officer, $5.

(8) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(9) For the initial transportation of a shipment of merchandise in bond, $10.

(10) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(b)(1) No fee shall be charged under subsection (a) for customs services provided in connection with—

(A) the arrival of any passenger whose journey originated in—

(i) Canada,

(ii) Mexico,

(iii) a territory or possession of the United States, or

(iv) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)), or

(B) the arrival of any railroad car that is part of a train which originates and terminates in the same country, but only if—

(i) such car is part of such train when such train departs from the United States, and

(ii) no passengers board or disembark from such train, and no cargo is loaded or unloaded from such train, while such train is within any country other than the country in which such train originates and terminates.

(2) No fee shall be charged under paragraph (7) of subsection (a) for the provision of customs services in connection with an informal entry if a fee is charged under paragraph (6) of subsection (a) for the provision of such services.

(3) No fee shall be charged under subsection (a)(3) for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(4) No fee shall be charged under subsection (a)(4) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(5) No fee shall be charged under subsection (a)(5) for the arrival of a private vessel or private aircraft during any calendar year after a total of $500 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such private vessel or private aircraft during such calendar year.

(c) For purposes of this section—

(1) The term "vessel" does not include any ferry.

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(d)(1) Each person providing transportation for hire into the customs territory of the United States by vessel or aircraft shall—

(A) collect from each passenger on such vessel or aircraft the fee charged under subsection (a)(6) at the time the document or ticket for such transportation is issued to such passenger, and

"(B) separately identify on such document or ticket the fee charged under subsection (a)(6) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country, and

(B) the fee charged under subsection (a)(6) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person providing transportation shall remit the fees collected under paragraph (1) or (2) to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which such fees are collected from the passengers.

(e)(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States on scheduled airline flights at customs serviced airports shall be adequately provided when needed and at no cost (other than the fees imposed under subsection(a)) to airlines and airline passengers.

(2) This subsection shall not apply with respect to any airport designated under section 236(c) of the Trade and Tariff Act of 1984 (19 U.S.C. 58b(c)).

(f)(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all the fees collected under subsection (a) shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

(2)(A) The Secretary of the Treasury is authorized and directed to refund out of the Customs User Fee Account expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services in an amount determined by the Secretary of the Treasury to be equivalent to the amount of such expenses.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).

(g) The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(h)(1) Subsection (i) of section 305 of the Rail Passenger Service Act (45 U.S.C. 545(i)) is amended by striking out the last sentence thereof.

(2) Subsection (e) of section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711(e)) is repealed.

(i) The provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

Subtitle F—Trade Adjustment Assistance

SEC. 778. SHORT TITLE.

This subtitle may be cited as the "Trade Adjustment Assistance Reform and Extension Act of 1985".

SEC. 778A. ELIGIBILITY OF WORKERS AND FIRMS FOR TRADE ADJUSTMENT ASSISTANCE.

(a)(1) Section 221(a) of the Trade Act of 1974 (19 U.S.C. 2271(a)) is amended by inserting "(including workers in any agricultural firm or subdivision of an agricultural firm)" after "group of workers".

(2) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

"SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

"(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(1) a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(2) sales or production, or both, of such firm or subdivision have decreased absolutely, and

"(3) increases of imports of articles like or directly competitive with articles—

"(A) which are produced by such workers' firm or appropriate subdivision thereof, or

"(B) to which such workers' firm, or appropriate subdivision thereof, provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(b) For purposes of subsection (a)(3), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

(b)(1) Subsection (a) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(a)) is amended by inserting "(including any agricultural firm)" after "a firm".

(2) Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

"(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(A) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(B) sales or production, or both, of such firm have decreased absolutely, and

"(C) increases of imports of articles like or directly competitive with articles—

"(i) which are produced by such firm, or

"(ii) to which such firm provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(2) For purposes of paragraph (1)(C), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

SEC. 778B. CASH ASSISTANCE FOR WORKERS.

(a)(1) Subsection (a) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291) is amended by adding after paragraph (4) the following new paragraph:

"(5) Such worker—

"(A) is enrolled in a training program approved by the Secretary under section 236(a),

"(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

"(C) has received a written statement certified by the Secretary under subsection (c)(1) after the date described in subparagraph (B).".

(2) Subsection (b) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(b)) is amended to read as follows:

"(b) If the Secretary determines that—

"(1) the adversely affected worker—

"(A) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

"(B) has ceased to participate in such training program before completing such training program, and

"(2) there is no justifiable cause for such failure or cessation,

no trade adjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).".

(3) Section 231 of the Trade Act of 1974 (19 U.S.C. 2291) is amended by adding at the end thereof the following new subsection:

"(c)(1) If the Secretary is unable to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying that the Secretary was unable to approve a training program for such worker. The authority of the Secretary to issue such a statement may not be delegated to a State or State agency under an agreement entered into under section 239.

"(2) If a State or State agency has entered into an agreement with the Secretary under section 239 and the State or State agency determines that it is unable to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall submit to the Secretary a written statement certifying such determination and the reasons for such determination. The Secretary shall review such determination and shall certify the written statement described in paragraph (1) only if the Secretary finds that the determination of the State or State agency is justified.

"(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of certifications made by the Secretary under paragraph (1) during the preceding year.".

(4) The last sentence of section 231(a)(2) of the Trade Act of 1974 (19 U.S.C. 2291(a)(2)) is amended by striking out all that follows after subparagraph (C) and inserting in lieu thereof "shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.".

(b) Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended—

(1) by striking out "under any Federal law," in subsection (c) and inserting in lieu thereof "under any Federal law other than this Act",

(2) by striking out "under section 236(c)" in subsection (c) and inserting in lieu thereof "under section 231(b)", and

(3) by striking out "If the training allowance" in subsection (c) and inserting in lieu thereof "If such training allowance".

(c)(1) Subsection (a) of section 233 of the Trade Act of 1974 (19 U.S.C. 2293(a)) is amended—

(A) by striking out "52" in paragraph (1) and inserting in lieu thereof "78", and

(B) by striking out "52-week period" in paragraph (2) and inserting in lieu thereof "78-week period".

(2) Paragraph (3) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(3)) is amended to read as follows:

"(3) If the adversely affected worker has received a written statement certified by the Secretary under section 231(c) after the date the worker became totally separated, or partially separated, from adversely affected employment, this subsection shall be applied with respect to such worker—

"(A) by substituting '52' for '78' in paragraph (1), and

"(B) by substituting '52-week period' for '78-week period' in paragraph (2).".

(3) Subsection (b) of section 233 of the Trade Act of 1974 (19 U.S.C. 2293(b)) is amended to read as follows:

"(b) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.".

SEC. 778C. JOB TRAINING FOR WORKERS.

(a) Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended—

(1) by striking out "for a worker" in subsection (a)(1)(A) and inserting in lieu thereof "for an adversely affected worker",

(2) by striking out "is available" in subsection (a)(1)(D) and inserting in lieu thereof "is reasonably available",

(3) by striking out "may approve" in the first sentence of subsection (a)(1) and inserting in lieu thereof "shall approve",

(4) by inserting "directly or through a voucher system" after "by the Secretary" in the second sentence of subsection (a)(1),

(5) by striking out "under paragraph (1)" in subsection (a)(2) and inserting in lieu thereof "under subsection (a)",

(6) by striking out "this subsection" in subsection (a)(3) and inserting in lieu thereof "this section",

(7) by striking out subsection (c),

(8) by redesignating paragraphs (2) and (3) of subsection (a) as subsections (d) and (e), respectively,

(9) by inserting at the end of subsection (a) the following new paragraphs:

"(2)(A) The aggregate amount of payments that may be made under paragraph (1) for any worker shall not exceed $4,000 for each partial separation or total separation.

"(B) The Secretary may issue more than one voucher under paragraph (1) to a worker with respect to any partial separation or total separation, but the aggregate value of such vouchers shall not exceed the amount of the limitation imposed by subparagraph (A) with respect to such separation.

"(3)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

"(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

"(i) have already been paid under any other provision of Federal law, or

"(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

"(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

"(4) The training programs that may be approved under paragraph (1) include, but are not limited to, the following:

"(A) on-the-job training,

"(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

"(C) any training program approved by a private industry council established under section 102 of such Act, and

"(D) any other training program approved by the Secretary.", and

(10) by inserting after subsection (b) the following new subsection:

"(c) The provisions of section 143(b) of the Job Training Partnership Act shall apply with respect to training provided under this chapter.

"(d) The Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) only if—

"(1) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

"(2) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment, and

"(3) the employer has not taken, at any time, any action which violated—

"(A) the provisions of section 143(b) of the Job Training Partnership Act, or

"(B) the terms of any certification described in paragraph (2) made by such employer,

with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).".

(b) Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended by adding at the end thereof the following new paragraph:

"(16) The term 'on-the-job training' means training provided by an employer to an individual who is employed by the employer.".

(c) Section 239 of the Trade Act of 1974 (19 U.S.C. 2311) is amended by adding at the end thereof the following new subsection:

"(e) Agreements entered into under this section may be made with one or more State or local agencies including—

"(1) the employment service agency of such State,

"(2) any State agency carrying out title III of the Job Training Partnership Act, or

"(3) any other State or local agency administering job training or related programs.".

SEC. 778D. JOB SEARCH ALLOWANCES.

Section 237 of the Trade Act of 1974 (19 U.S.C. 2297) is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

"(2) For purposes of this subsection—

"(A) The term 'job search program' means a job search workshop or job finding club.

"(B) The term 'job search workshop' means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

"(C) The term 'job finding club' means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised application in which participants attempt to obtain jobs.".

SEC. 778E. ADJUSTMENT ASSISTANCE FOR FIRMS.

(a) Paragraph (1) of section 252(b) of the Trade Act of 1974 (19 U.S.C. 2342(b)(1)) is amended to read as follows:

"(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

"(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

"(B) gives adequate consideration to the interests of the workers of such firm, and

"(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.".

(b) Section 254 of the Trade Act of 1974 (19 U.S.C. 2344) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1985.".

SEC. 778F. TERMINATION OF TRADE ADJUSTMENT ASSISTANCE.

(a) Section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended—

(1) by striking out the first sentence thereof and inserting in lieu thereof "(a)",

(2) by striking out the section heading and inserting in lieu thereof "sec. 285. termination.", and

(3) by adding at the end thereof the following new subsection:

"(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after the date that is 6 years after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1985.".

(b) The table of contents of the Trade Act of 1974 is amended by striking out the item relating to section 285 and inserting in lieu thereof the following:

"Sec. 285. Termination.".

SEC. 778G. FUNDING OF TRADE ADJUSTMENT ASSISTANCE.

(a)(1) Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking out "1982 through 1985" and inserting in lieu thereof "1986, 1987, 1988, and 1989".

(2) Subsection (b) of section 256 of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended—

(A) by inserting "for fiscal years 1986, 1987, 1988, and 1989" after "to the Secretary",

(B) by striking out "from time to time", and

(C) by striking out the last sentence thereof.

(b) Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.) is amended by inserting after section 285 the following new section:

"SEC. 286. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

"(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or otherwise appropriated to the Trust Fund.

"(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

"(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

"(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and oper-

ations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

"(i) on original issue at the issue price, or

"(ii) by purchase of outstanding obligations at the market price.

"(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

"(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(d) Amounts in the Trust Fund shall only be available—

"(1) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any provision of Federal law, and

"(2) to the extent and in such amounts as may be provided by appropriation Acts, for making expenditures to carry out the provisions of chapters 2 and 3.

None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.".

(c) The table of contents for the Trade Act of 1974 is amended by inserting, after the item relating to section 285, the following new items:

"Sec. 286. Trade Adjustment Trust Fund.

"Sec. 287. Imposition of additional duty.

"Sec. 288. Appropriation of funds.".

SEC. 778H. IMPOSITION OF SMALL UNIFORM DUTY ON ALL IMPORTS.

(a)(1) The President shall undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform duty on all imports to such country for the purpose of using the revenue from such duty to fund any program which assists adjustment to import competition.

(2) On the date that is 6 months after the date of enactment of this Act, the President shall submit to the Congress a report on the progress of negotiations conducted under paragraph (1).

(3) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a duty described in paragraph (1), the President shall submit to the Congress a written statement certifying that the General Agreement on Tariffs and Trade allows such a duty.

(b) Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.), as amended by section 778G(b) of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 287. IMPOSITION OF ADDITIONAL DUTY.

"(a) In addition to any other duty imposed by law, there is hereby imposed a duty on the entry, or withdrawal from warehouse, of any article for consumption in the customs territory of the United States.

"(b)(1) The rate of the duty imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President at least 30 days prior to the date such rate takes effect which is equal to the lesser of—

"(A) 1 percent, or

"(B) a percentage that is sufficient to provide the funding necessary to carry out the provisions of chapters 2 and 3 of title II of the Trade Act of 1974.

"(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of duty with respect to such article by subsection (a).

"(2) No duty shall be imposed by subsection (a) with respect to any article that is treated as duty free under part 148 of title 19 of the Code of Federal Regulations.".

SEC. 778I. TAXATION OF TRADE READJUSTMENT ASSISTANCE.

Section 85(c) of the Internal Revenue Code of 1954 is amended by inserting ", but not including payments of training costs, or training vouchers, provided under section 236 of the Trade Act of 1974 (19 U.S.C. 2296)" after "nature of unemployment compensation".

SEC. 778J. EFFECTIVE DATES.

(a) The amendments made by sections 778E, 778F, and 778G(a) and the provisions of section 778H(a), shall take effect on the date of enactment of this Act.

(b)(1) The amendment made by section 778H(b) shall apply to any article entered, or withdrawn from warehouse, for consumption after the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date that is 30 days after the date on which the President submits to the Congress the written statement described in section 778H(a)(3).

(2) The amendments made by subsections (b) and (c) of section 778G shall take effect on the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date described in subsection (b)(1)(B).

(c) The amendments made by sections 778A, 778B, 778C, and 778D shall take effect on the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is 1 year after the date described in subsection (b)(1)(B).

(d) The amendment made by section 778I shall apply to taxable years ending on or after the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is 1 year after the date described in subsection (b)(1)(B).

Subtitle G—Revenue Sharing

SEC. 778. TERMINATION OF GENERAL REVENUE SHARING.

(a)(1) Except as otherwise provided in this section, the provisions of chapter 67 of title 31, United States Code, are hereby repealed.

(2) The Secretary of the Treasury shall continue to be the trustee of the Trust Fund, which shall remain in existence until amounts in the Trust Fund are expended for entitlement payments to local governments in accordance with the terms of the Revenue Sharing Act.

(3) The Secretary is authorized to take such necessary or appropriate actions, to carry out the requirements of this Act with respect to funds appropriated to the Trust Fund, as were authorized under the terms of the Revenue Sharing Act, including but not limited to enforcement of the regulatory provisions concerning nondiscrimination, audits, accounting procedures, public hearings, expenditures in accordance with State and local law, and cooperation with reasonable requests for information.

(4) The Secretary may increase or decrease a payment to a unit of general local government under the Revenue Sharing Act to account for a prior underpayment or overpayment only if the increase or decrease is demanded by the Secretary or such unit of general local government before March 1, 1986.

(5) Amounts paid to units of general local governments from the Trust Fund shall be used, obligated, or appropriated by the units of general local governments before April 1, 1987, and these funds shall continue to be subject to the terms of the Revenue Sharing Act.

(6) Subsection (a)(1) of this section shall not have the effect of releasing or extinguishing any fiscal sanction, finding, determination, compliance agreement, or other duly authorized action for the purpose of sustaining any proper action or prosecution for enforcement authorized under the terms of the Revenue Sharing Act.

(7) The Attorney General, and persons adversely affected by a practice of a local government, may bring a civil action in an appropriate district court of the United States against the applicable unit of general local government as was authorized under the Revenue Sharing Act. The court is authorized to grant such relief as was authorized under the terms of the Revenue Sharing Act.

(8) The Secretary shall report to Congress on the operation and status of the Trust Fund and the implementation of this section not later than December 1 of each year the Trust Fund remains on the books of the Department of the Treasury.

(b)(1) The table of chapters for subtitle V of title 31, United States Code, is amended by striking out the item relating to chapter 67.

(2) Paragraph (2) of section 1115(b) of the Social Security Act (42 U.S.C. 1315(b)(2)) is amended—

(A) by adding "and" at the end of subparagraph (A),

(B) by striking out "; and" at the end of subparagraph (B) and inserting in lieu thereof a period, and

(C) by striking out subparagraph (C).

(3) Section 501(b)(6) of the Housing Act of 1949 (42 U.S.C. 1471(b)(6)) and section 102(a)(17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(17)) are each amended by striking out "under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)" and inserting in lieu thereof ", prior to October 1, 1986, under chapter 67 of title 31, United States Code".

(4) Section 302 of the Age Discrimination Act of 1975 (42 U.S.C. 6101) is amended by striking out ", including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)".

(5) Paragraph (3) of section 3 of the Coastal Barrier Resources Act (16 U.S.C. 3502(3)) is amended by striking out subparagraph (A) and redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(6) Subparagraph (B) of section 119(n)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(n)(2)(B)) is amended by striking out "is an eligible recipient" and inserting in lieu thereof "was an eligible recipient, prior to October 1, 1986,".

(7) Paragraph (1) of section 248(h) of the National Housing Act (12 U.S.C. 1715z-13(h)(1)) is amended by striking out "is an eligible recipient" and inserting in lieu thereof "was an eligible recipient, prior to October 1, 1986,".

(c) For purposes of this section—

(1) The term "Trust Fund" means the State and Local Assistance Trust Fund established under the Revenue Sharing Act.

(2) The term "Revenue Sharing Act" means the provisions of chapter 67 of title 31, United States Code, as in effect on the day before the date of enactment of this Act and subject to the terms of any appropriation Act of fiscal year 1986.

(3) The term "Secretary" means the Secretary of the Treasury.

(d) There are hereby authorized to be appropriated for fiscal year 1987, such sums as may be necessary to administer the provisions of this section, and to provide for the orderly phaseout of the Revenue Sharing Program.

(e)(1) Except as otherwise provided in this subsection, the repeal and amendments made by this section, and the provisions of this section, shall take effect on October 1, 1986.

(2) The provisions of subsections (a)(4), (c), and (d) shall take effect on the date of enactment of this Act.

Subtitle H—Pension Benefit Guaranty Corporation

SEC. 773A. INCREASE IN PENSION BENEFIT GUARANTY CORPORATION PREMIUMS FOR SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 is amended by striking out "for plan years beginning after December 31, 1977, an amount equal to $2.60" and inserting in lieu thereof "for plan years beginning after December 31, 1985, an amount equal to $8.10".

(b) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 4006(a)(3)(C) of such Act is amended by striking out "The maximum" and inserting in lieu thereof "In the case of a multiemployer plan, the maximum".

(2) Clause (iv) of section 4006(a)(3)(C) of such Act is amended by striking out "The provisions" and inserting in lieu thereof "In the case of a multiemployer plan, the provisions".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1985.

Subtitle I—Revenue Provisions

SEC. 78A. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This subtitle may be cited as the "Comprehensive Omnibus Budget Reconciliation Revenue Act of 1985".

(b) AMENDMENT OF 1954 CODE.—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 Internal Revenue Code of 1954.

PART I—INCOME TAX PROVISIONS

SEC. 781. FULL-TIME STUDENTS NOT ELIGIBLE FOR INCOME AVERAGING.

(a) IN GENERAL.—Subsection (d) of section 1303 (defining eligible individuals for income averaging) is amended to read as follows:

"(d) ELIGIBLE INDIVIDUALS NOT TO INCLUDE FULL-TIME STUDENTS.—

"(1) IN GENERAL.—For purposes of this part, an individual shall not be an eligible individual for the computation year if, at any time during any base period year, such individual was a student.

"(2) EXCEPTION FOR MARRIED STUDENTS PROVIDING 25 PERCENT OR LESS OF JOINT INCOME.—Paragraph (1) shall not apply to any individual for any computation year if—

"(A) the individual makes a joint return for the computation year, and

"(B) not more than 25 percent of the aggregate adjusted gross income of such individual and the spouse of such individual for such computation year is attributable to such individual.

"(3) STUDENT DEFINED.—For purposes of this subsection, the term 'student' means, with respect to a taxable year, an individual who during each of 5 calendar months during such taxable year—

"(A) was a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

"(B) was pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.".

(b) REPEAL OF NON-FULL-TIME STUDENT SUPPORT EXCEPTION.—Paragraph (2) of section 1303(c) (relating to individuals receiving support from others) is amended—

(1) by striking out subparagraph (A),

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), and

(3) by striking out "subparagraph (C)" in the second sentence and inserting in lieu thereof "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1985.

SEC. 782. EMPLOYERS REQUIRED TO PROVIDE CERTAIN EMPLOYEES AND FAMILY MEMBERS WITH CONTINUED HEALTH INSURANCE COVERAGE AT GROUP RATES.

(a) DENIAL OF DEDUCTION FOR EMPLOYER CONTRIBUTION TO PLAN.—Subsection (i) of section 162 (relating to deduction for trade or business expenses with respect to group health plans) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) PLANS MUST PROVIDE CONTINUED COVERAGE TO CERTAIN INDIVIDUALS.—

"(A) IN GENERAL.—No deduction shall be allowed under this section for expenses paid or incurred by an employer for any group health plan maintained by an employer unless all such plans maintained by such employer meet the continuing coverage requirements of subsection (k).

"(B) EXCEPTION FOR CERTAIN SMALL EMPLOYERS, ETC.—Subparagraph (A) shall not apply to any plan described in section 106(b)(2).".

(b) DENIAL OF EXCLUSION FOR HIGHLY COMPENSATED INDIVIDUALS.—Section 106 (relating to contributions by employer to accident and health plans) is amended by inserting "(a)" before "Gross" and by inserting at the end thereof the following new subsection:

"(b) EXCEPTION FOR HIGHLY COMPENSATED INDIVIDUALS WHERE PLAN FAILS TO PROVIDE CERTAIN CONTINUING COVERAGE.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any amount contributed by an employer on behalf of a highly compensated individual (within the meaning of section 105(h)(5)) to a group health plan maintained by an employer unless all such plans maintained by such employer meet the continuing coverage requirements of section 162(k).

"(2) EXCEPTION FOR CERTAIN PLANS.—Paragraph (1) shall not apply to any group health plan established and maintained for employees by—

"(A) an employer which normally employed 25 or fewer employees on a typical business day during the preceding calendar year,

"(B) the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

"(C) a church or a convention or association of churches which is exempt from tax under section 501, or an organization described in section 501(c)(3) which is operated, supervised, or controlled by any of the foregoing.

Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).

"(3) GROUP HEALTH PLAN.—For purposes of this subsection, the term 'group health plan' has the meaning given such term by section 162(i)(3).".

(c) CONTINUING COVERAGE REQUIREMENTS.—Section 162 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) CONTINUING COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.—

"(1) IN GENERAL.—For purposes of subsection (i)(2) and section 106(b)(1), a group health plan meets the requirements of this subsection only if—

"(A) each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the 60-day period beginning with the qualifying event, continuation coverage under the plan, and

"(B) the plan meets such notification requirements with respect to such election as the Secretary may prescribe.

"(2) CONTINUATION COVERAGE.—For purposes of paragraph (1), the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(A) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which is identical to the coverage which was provided to the qualified beneficiary immediately before the qualifying event (taking into account any changed marital status), except that—

"(i) such coverage may be modified in the same manner as such coverage is modified for all similarly situated beneficiaries for whom a qualifying event has not occurred, and

"(ii) each qualified beneficiary shall be entitled to modify such coverage at the same time and in the same manner as any other similarly situated beneficiary under the plan.

"(B) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending on the earlier of—

"(i) the last day of the 18-month period beginning on the date of the first qualifying event with respect to the qualified beneficiary (or such earlier day as the qualified beneficiary specifies), or

"(ii) the date on which the employer ceases to provide any group health plan to any employee.

"(C) PREMIUM REQUIREMENTS.—The plan may require a qualified beneficiary to pay a premium for the coverage, except that such premium—

"(i) shall not exceed 102 percent of the applicable premium, and

"(ii) may, at the election of the qualified beneficiary, be made in monthly installments.

"(D) NO REQUIREMENTS OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(3) QUALIFYING EVENT.—For purposes of this subsection, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for subsection (i)(2), result in the loss of coverage of a qualified beneficiary:

"(A) The death of the covered employee.

"(B) The separation from service of the covered employee.

"(C) The divorce or legal separation of the covered employee from the employee's spouse.

"(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"(4) APPLICABLE PREMIUM.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable premium' means, with respect to any coverage of a qualified beneficiary, the cost to the plan for the period of the coverage for a similarly situated beneficiary with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(B) SPECIAL RULE FOR SELF-INSURED PLANS.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of a self-insured plan, the applicable premium for any calendar year shall be the cost for a similarly situated beneficiary for the preceding calendar year, adjusted by the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on June 30 of such preceding calendar year.

"(ii) SELF-INSURED PLAN TO USE REASONABLE ESTIMATES WHERE SIGNIFICANT CHANGE.—In any case in which there is any significant change in coverage under, or in employees covered by, a self-insured health plan, an employer shall determine the employer contribution for any calendar year on the basis of a reasonable estimate of the cost of providing coverage. To the extent practicable, such estimate shall be made on an actuarial basis, and in the making of any such estimate, there shall be taken into account such factors as may be required under regulations.

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) COVERED EMPLOYEE.—The term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

"(B) QUALIFIED BENEFICIARY.—

"(i) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(I) as the spouse of the covered employee, or

"(II) as the dependent child of the employee.

"(ii) SPECIAL RULE FOR TERMINATIONS.—In the case of a qualifying event described in paragraph (3)(B), the term 'qualified beneficiary' includes the covered employee.".

(d) CONFORMING AMENDMENT.—Paragraph (1) of section 162(i) is amended by striking out "General rule" and inserting in lieu thereof "Coverage relating to end stage renal disease".

(e) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall apply to plan years beginning on or after July 1, 1986.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 783. APPLICATION OF FRINGE BENEFIT RULES TO AIRLINES AND THEIR AFFILIATES.

(a) PARENTS OF AIRLINE EMPLOYEES TREATED AS EMPLOYEES IN APPLYING FRINGE BENEFIT RULES.—

(1) IN GENERAL.—Section 132(f) (relating to certain individuals treated as employees with respect to certain fringe benefits) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR PARENTS IN THE CASE OF AIR TRANSPORTATION.—Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on January 1, 1985.

(b) LINE OF BUSINESS TEST FOR AFFILIATES PROVIDING AIRLINE-RELATED SERVICES.—

(1) IN GENERAL.—Section 132(h) (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR AFFILIATES OF AIRLINES.—

"(A) IN GENERAL.—If—

"(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

"(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

"(B) QUALIFIED AFFILIATE.—For purposes of this paragraph, the term 'qualified affiliate' means any corporation which is predominantly engaged in airline-related services.

"(C) AIRLINE-RELATED SERVICES.—For purposes of this paragraph, the term 'airline-related services' means any of the following services provided in connection with air transportation:

"(i) Catering.

"(ii) Baggage handling.

"(iii) Ticketing and reservations.

"(iv) Flight planning and weather analysis.

"(v) Restaurants and gift shops located at an airport.

"(vi) Such other similar services provided to an airline as the Secretary may prescribe.

"(D) AFFILIATED GROUP.—For purposes of this paragraph, the term 'affiliated group' has the meaning given such term by section 1504(a).".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on January 1, 1985.

(c) TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE.—If, as of September 12, 1984—

(1) an individual—

(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1954, including subsection (f) thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the "first corporation", and

(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the "second corporation",

(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

(3) the primary business of the affiliated group was air transportation of passengers, then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1954, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.

SEC. 784. TAX TREATMENT OF FACULTY HOUSING.

(a) IN GENERAL.—Section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended by adding at the end thereof the following new subsection:

"(d) LODGING FURNISHED BY CERTAIN EDUCATIONAL INSTITUTIONS TO EMPLOYEES.—

"(1) IN GENERAL.—For purposes of determining under section 61 the amount includible in gross income for any taxable year with respect to qualified campus lodging furnished to an employee of an educational institution, the value of the use of such lodging shall be treated as not greater than 5 percent of the appraised value of such lodging for such taxable year.

"(2) PARAGRAPH (1) ONLY TO APPLY IF QUALIFIED APPRAISAL.—Paragraph (1) shall apply only if the appraised value is determined by an appraisal which meets such requirements as the Secretary may prescribe.

"(3) QUALIFIED CAMPUS LODGING.—For purposes of this subsection, the term 'qualified campus lodging' means lodging to which subsection (a) does not apply and which is—

"(A) located on, or in the proximity of, a campus of the educational institution, and

"(B) furnished to the employee, his spouse, or any of his dependents by or on behalf of such institution for use as a residence.

"(4) EDUCATIONAL INSTITUTION.—For purposes of this subsection, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

SEC. 785. CERTAIN INSOLVENT TAXPAYERS ALLOWED TO REDUCE CAPITAL GAINS PREFERENCE ITEM FOR PURPOSES OF THE INDIVIDUAL MINIMUM TAX.

(a) IN GENERAL.—Paragraph (9) of section 57(a) (relating to capital gains as items of tax preference) is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULE FOR CERTAIN INSOLVENT TAXPAYERS.—

"(i) IN GENERAL.—The amount of the tax preference under subparagraph (A) shall be reduced (but not below zero) by the excess (if any) of—

"(I) the applicable percentage of gain from any insolvency transaction, over

"(II) the applicable percentage of any loss from any insolvency transaction which offsets such gain.

"(ii) REDUCTION LIMITED TO AMOUNT OF INSOLVENCY.—The amount of the reduction determined under clause (i) shall not exceed the amount by which the taxpayer is insolvent immediately before the transaction (reduced by any portion of such amount previously taken into account under this clause).

"(iii) INSOLVENCY TRANSACTION.—For purposes of this subparagraph, the term 'insolvency transaction' means—

"(I) the transfer by a taxpayer of real property used by the taxpayer in the active conduct of a trade or business of the taxpayer to a creditor in cancellation of indebtedness, or

"(II) the sale or exchange by the taxpayer of property described in subclause (I) under the threat of foreclosure,

but only if the taxpayer is insolvent immediately before such transaction.

"(iv) INSOLVENT.—For purposes of this subparagraph, the term 'insolvent' means the excess of liabilities over the fair market value of assets.

"(v) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term 'applicable percentage' means that percentage of net capital gain with respect to which a deduction is allowed under section 1202(a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers or sales or exchanges made after December 31, 1981, in taxable years ending after such date.

SEC. 784. TREATMENT OF CERTAIN POLLUTION CONTROL BONDS.

(a) GENERAL RULE.—For purposes of subparagraph (F) of section 103(b)(4) of the Internal Revenue Code of 1954 (relating to pollution control facilities), any obligation issued after December 31, 1985, shall be treated as described in such subparagraph if it is part of an issue substantially all of the proceeds of which are used by a qualified regional pollution control authority to acquire existing air or water pollution control facilities which the authority itself will operate in order to maintain or improve control of pollutants. The provisions of section 103(b)(17) of such Code (relating to prohibition on acquisition of existing property not permitted) shall not apply to any obligation described in the preceding sentence.

(b) $200,000,000 LIMITATION.—The aggregate amount of obligations to which subsection (a) applies shall not exceed $200,000,000, except that the amount of such obligations issued during calendar year 1986 to which subsection (a) applies shall not exceed $100,000,000.

(c) RESTRICTIONS.—Subsection (a) shall apply only if—

(1) the amount paid (directly or indirectly) for the facilities does not exceed their fair market value,

(2) the fees or charges imposed (directly or indirectly) on any seller for the use of any facilities after the sale are not less than the amounts charged for the use of such facilities to persons other than the seller,

(3) the original use of the facilities acquired with the proceeds of such obligations commenced before September 3, 1982, and

(4) no person other than the qualified regional pollution control authority is considered after the sale as the owner of the facilities for purposes of Federal income taxes.

(d) QUALIFIED REGIONAL POLLUTION CONTROL AUTHORITY DEFINED.—For purposes of this section, the term "qualified regional pollution control authority" means an authority which—

(1) is a political subdivision created by State law to control air or water pollution,

(2) has within its jurisdictional boundaries all or part of at least 2 counties (or equivalent political subdivisions),

(3) operates air or water pollution control facilities, and

(4) was created on September 1, 1969.

(e) REPEAL OF SECTION 103(b)(11).—Paragraph (11) of section 103(b) is hereby repealed.

SEC. 787. TREATMENT OF THE NETTING OF GAINS AND LOSSES BY COOPERATIVES.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules applicable to cooperatives) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULES FOR THE NETTING OF GAINS AND LOSSES BY COOPERATIVES.—For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies—

"(1) OPTIONAL NETTING OF PATRONAGE GAINS AND LOSSES PERMITTED.—The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

"(2) CERTAIN NETTING NOT PERMITTED AFTER SECTION 381 TRANSACTIONS.—If such an organization acquires the assets of another such organization in a transaction described in section 381(a) and exercises its option under paragraph (1), the acquiring organization may not, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, to the extent that—

"(A) such earnings are not properly allocable to periods after the date of acquisition, and

"(B) such earnings could not have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

"(3) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

"(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

"(ii) states generally the identity of the offsetting allocation units, and

"(iii) states briefly what rights, if any, its patrons may have to additional financial information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

"(B) CERTAIN INFORMATION NEED NOT BE PROVIDED.—An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which—

"(i) could result in a competitive disadvantage to such organization, or

"(ii) could create a competitive advantage to the benefit of a competitor of such organization.

"(C) FAILURE TO PROVIDE SUFFICIENT NOTICE.—If the Secretary determines that an organization failed to provide sufficient notice under this paragraph—

"(i) the Secretary shall notify such organization, and

"(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

"(4) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this subsection, the terms 'patronage earnings' and 'patronage losses' means earnings and losses, respectively, which are derived from business done with or for patrons of the organization.".

(b) TAX-EXEMPT STATUS NOT AFFECTED BY NETTING.—Section 521(b) (relating to applicable rules) is amended by adding at the end thereof the following new paragraph:

"(6) NETTING OF LOSSES.—Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j).".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1962.

(2) NOTIFICATION REQUIREMENT.—The provisions of section 1388(j)(3) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall apply to taxable years beginning on or after the date of the enactment of this Act.

(3) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer that a change in law is intended as to whether any patronage earnings may or may not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted.

SEC. 788. ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

Subsection (c)(1) of section 126 of the Deficit Reduction Act of 1984 is amended by striking out "1985" and inserting in lieu thereof "1986".

PART 2—SUPERFUND

SEC. 788. SHORT TITLE.

This part may be cited as the "Superfund Revenue Act of 1985".

SEC. 789A. 5-YEAR EXTENSION OF TAX ON PETROLEUM AND CERTAIN CHEMICALS; CERTAIN EXEMPTIONS.

(a) 5-YEAR EXTENSION; TERMINATION IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.—

(1) IN GENERAL.—Subsection (d) of section 4611 (relating to termination) is amended to read as follows:

"(d) TERMINATION.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the tax imposed by this subsection shall not apply after September 30, 1990.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND IS MORE THAN CERTAIN AMOUNT.—If, on September 30, 1988, or September 30, 1989—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $2,225,000,000 or $3,000,000,000, respectively, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $2,225,000,000, or $3,000,000,000 on September 30, 1989, or September 30, 1990, respectively, if no tax is imposed under section 4001, 4611, or 4661 during calendar year 1989 or 1990, respectively,

then no tax shall be imposed under this section during calendar year 1989 or 1990, as the case may be.

"(3) No tax if amounts collected exceed $7,500,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of—

"(i) the amount of taxes which will be collected under sections 4001, 4611, and 4661 and credited to the Hazardous Substance Superfund, and

"(ii) the amount of interest which will be credited to such Fund under section 9602(b)(3),

during the period beginning October 1, 1985, and ending September 30, 1990.

"(B) TERMINATION IF $7,500,000,000 CREDITED BEFORE SEPTEMBER 30, 1990.—If the Secretary estimates under subparagraph (A) that more than $7,500,000,000 will be credited to the Fund before September 30, 1990, no tax shall be imposed under this section after the date on which the Secretary estimates $7,500,000,000 will be so credited to the Fund.

"(4) PROCEDURES FOR TERMINATION.—The Secretary shall by regulation provide procedures for the termination under paragraph (2) or (3) of the tax under this section and section 4661.".

(2) CONFORMING AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (relating to expiration of revenue provisions) is repealed.

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) IN GENERAL.—Section 4662 (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) a tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that such person—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(2) REFUND OR CREDIT.—Paragraph (1) of section 4662(d) (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" in subparagraph (B) and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" in the last sentence and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (e) of this section)".

(c) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—

(1) IN GENERAL.—Section 4662(b) (relating to exceptions and other special rules) is amended by adding at the end thereof the following new paragrdph:

"(7) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXCEPTION FOR IMPORTS.—This paragraph shall not apply to the sale of any chromium, cobalt, or nickel which is diverted or recovered outside the United States and then imported into the United States.

"(C) CERTAIN PERSONS NOT ELIGIBLE.—

"(i) IN GENERAL.—This paragraph shall not apply to any taxpayer during any period during which the taxpayer is a potentially responsible party for a site which is listed on the National Priorities List published by the Environmental Protection Agency under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, except that such period shall not begin until the Administrator of the Environmental Protection Agency notifies the taxpayer that the taxpayer is such a party.

"(ii) EXCEPTION WHERE TAXPAYER IS IN COMPLIANCE.—Clause (i) shall not apply to any portion of the period during which the taxpayer is in compliance with each order, decree, or judgment issued against the taxpayer with respect to the site in any action or proceeding under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, or both.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.".

(2) CREDIT OR REFUND.—Paragraph (1) of section 4662(d), as amended by subsection (b)(2), is amended by inserting "(b)(7) or" before "(e)" in the last sentence thereof.

(d) TAX EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 (relating to definitions and special rules with respect to the tax on certain chemicals), as amended by subsection (c)(1), is amended by adding at the end thereof the following paragraph:

"(8) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.".

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(8), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(8) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.".

(e) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of a inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) EXCEPTION FOR EXCHANGES WHERE RECIPIENT NOT TAXABLE.—Subparagraph (A) shall not apply to any inventory exchange if the person receiving the taxable chemical would not be subject to tax on the sale of such chemical (other than by reason of subsection (b)).

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(D) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means an exchange in which a person exchanges property which, in the hands of such person, is property described

in section 1221(1) for property of another person which, in such other person's hands, is so described.".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 1985.

(2) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendment made by subsection (e) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (e) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of the Internal Revenue Code of 1954 and paid the tax imposed by such section.

(C) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(C) of such Code (as added by subsection (e)) shall apply to exchanges made after December 31, 1985.

SEC. 789B. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Subtitle D (relating to miscellaneous excise taxes) is amended by inserting before chapter 31 the following new chapter:

"CHAPTER 36—SUPERFUND EXCISE TAX

"SUBCHAPTER A. Imposition of tax.

"SUBCHAPTER B. Taxable transaction.

"SUBCHAPTER C. Taxable amount; exempt transactions; credit against tax.

"SUBCHAPTER D. Administration.

"SUBCHAPTER E. Definitions; special rules.

"Subchapter A—Imposition of Tax

"Sec. 4001. Imposition of tax.

"Sec. 4002. Termination.

"SEC. 4001. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this chapter, the amount of the tax shall be .08 percent of the taxable amount.

"SEC. 4002. TERMINATION.

"(a) IN GENERAL.—No tax shall be imposed under this section after December 31, 1990.

"(b) NO TAX IF FUNDS UNSPENT OR $7,500,000,000 COLLECTED.—No tax shall be imposed under subsection (a) during any period during which no tax is imposed under section 4611(a) by reason of paragraph (2) or (3) of section 4611(d), except that section 4611(d)(3) shall, for purposes of this subsection, be applied by substituting 'December 31, 1990' for 'September 30, 1990' each place it appears.

"(c) PROCEDURES FOR TERMINATION.—

"(1) PRORATION OVER TAXABLE PERIOD.—In the case of any taxable period which begins before and ends after the date of any termination under this section, the tax imposed by section 4001 (and the credit allowable under section 4013) for such taxable period shall be equal to an amount which bears the same ratio of the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

"(A) the number of days in such taxable period up to and including the date of termination, bears to

"(B) the number of days in such taxable period.

"(2) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"Subchapter B—Taxable Transaction

"Sec. 4003. Taxable transaction.

"Sec. 4004. Taxable person.

"SEC. 4003. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this chapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property in the United States by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the customs territory of the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—For exempt transactions, see section 4012.

"SEC. 4004. TAXABLE PERSON.

"Except as otherwise provided in this chapter, for purposes of this chapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4003(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4003(a), the importer of the tangible personal property.

"Subchapter C—Taxable Amount; Exempt Transactions; Credit Against Tax

"Sec. 4011. Taxable amount.

"Sec. 4012. Exempt transactions.

"Sec. 4013. Credit against tax on sales and leases.

"SEC. 4011. TAXABLE AMOUNT.

"(a) SALE.—For purposes of this chapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

"(1) including items payable to the seller with respect to such transaction, but

"(2) excluding the tax imposed by section 4001 with respect to such transaction.

"(b) IMPORTS.—For purposes of this chapter, the taxable amount in the case of any import shall be—

"(1) the customs value plus customs duties and any other duties which may be imposed, or

"(2) if there is no such customs value, the fair market value (determined as if the importer had sold the property).

"(c) LEASES.—For purposes of this chapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

"(d) CONTAINERS, PACKING AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

"(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

"(1) SALES.—In the case of a sale where the consideration is received by the seller in more than 1 taxable period, the taxable amount for each such taxable period shall include that portion of the taxable amount which is includible in the gross income of the taxable person for purposes of chapter 1 for taxable years ending with or within such taxable period (or would be so includible if it were not excludable from gross income).

"(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each such taxable period shall include the gross lease payments received by the taxable person during such taxable period.

"SEC. 4012. EXEMPT TRANSACTIONS.

"(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4001 on any tangible personal property imported into the customs territory of the United States as part of a shipment (within the meaning of section 498(1) of the Tariff Act of 1930; 19 U.S.C. 1498(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4001 on the sale of any property which is to be exported outside the United States.

"(c) GOVERNMENTAL ENTITIES AND EXEMPT ORGANIZATIONS EXEMPT FROM TAX ON SALES AND LEASES.—

"(1) GOVERNMENTAL ENTITIES.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by the United States, any State or political subdivision, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of any of the foregoing.

"(2) EXEMPT ORGANIZATIONS.—No tax shall be imposed under section 4001 on the sale or leasing of any tangible personal property by any organization which is exempt from taxation under chapter 1 by reason of section 501(a), unless the taxable transaction is part of an unrelated trade or business (within the meaning of section 513).

"SEC. 4013. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 4001 for any taxable period on taxable transactions described in paragraph (1) of section 4003(a) an amount equal to the greater of—

"(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) the amount of the tax imposed by section 4001 on such taxable transactions, to the extent such amount does not exceed $4,000.

"(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4001 for such period.

"(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a) for such succeeding taxable period.

"(c) QUALIFIED INVENTORY COSTS.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—The qualified inventory costs of any taxpayer for any taxable period shall, in lieu of any allowance for depreciation or amortization, include any amount paid or incurred during such taxable period for tangible personal property acquired or

leased incident to, and necessary for, production or manufacturing operations or processes.

"(B) TAXPAYERS USING METHODS OF ACCOUNTING OTHER THAN THE FULL ABSORPTION METHOD.—In the case of a taxable person using a method of accounting other than the full absorption method used in determining the inventory of a manufacturer under section 471, the qualified inventory costs of such person shall, except as provided in regulations, include only those costs included in the inventory of a manufacturer under such full absorption method.

"(C) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

"(d) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of applying the $4,000 amount under subsection (a)(2).

"(2) ALLOCATION OF $4,000.—The $4,000 amount under subsection (a)(2) shall be allocated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"Subchapter D—Administration

"Sec. 4021. Liability for tax.

"Sec. 4022. Return requirement; taxable period; depositary requirements.

"Sec. 4023. Regulations.

"SEC. 4021. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4001.

"SEC. 4022. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4001 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if there is no return of tax under chapter 1, the due date (including extensions) under chapter 1 for a taxable year which is the calendar year.

"(2) EXCEPTION FOR SALES OR LEASES OF $5,000,000 OR LESS.—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4003(a) if the aggregate taxable amount for such transactions is $5,000,000 or less.

"(3) OTHER EXCEPTIONS.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this chapter, the term 'taxable period' means—

"(1) the taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) DEPOSITARY REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any person with respect to whom a tax is imposed under section 4001 for any taxable period on any taxable transaction described in paragraph (1) of section 4003(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the first taxable period of any taxable person to which this chapter applies if the gross receipts of such person during the first taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4023. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this chapter.

"Subchapter E—Definitions; Special Rules

"Sec. 4031. Definitions; special rules.

"SEC. 4031. DEFINITIONS; SPECIAL RULES.

"(a) MANUFACTURING.—For purposes of this chapter—

"(1) PRODUCTION INCLUDED.—The term 'manufacturing' includes the production of tangible personal property, including raw materials.

"(2) CERTAIN ACTIVITIES NOT INCLUDED IN MANUFACTURING.—The term 'manufacturing' does not include—

"(A) the furnishing of services incidental to storage or transportation of property,

"(B) the preparation of food in a restaurant or other retail food establishment, or

"(C) the incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) MANUFACTURER.—For purposes of this chapter, the term 'manufacturer' includes any producer of tangible personal property (including raw materials), but does not include any person conducting an activity described in subsection (a)(2).

"(c) PERSON.—For purposes of this chapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this chapter, the term 'United States', when used in a geographical sense, includes a Commonwealth and any possession of the United States.

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this chapter, the term 'tangible personal property' does not include unprocessed agricultural products or unprocessed food products.

"(f) UNPROCESSED AGRICULTURAL PRODUCTS.—For purposes of this chapter, the term 'unprocessed agricultural product' includes timber and fish.

"(g) CUSTOMS TERRITORY OF THE UNITED STATES.—For purposes of this chapter, the term 'customs territory of the United States' has the meaning given such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(h) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4001 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

"(i) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 and any similar provision of law which requires an internal revenue tax collected by the United States to be paid to a Commonwealth or possession of the United States shall not apply to any tax imposed by section 4001.

"(j) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 1 calendar year, there shall be substituted for the $4,000 amounts in subsections (a) and (d) of section 4013 and the $5,000,000 amount in section 4022(a)(2) the amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(k) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this chapter, except as provided in regulations, the term 'sale' includes any exchange or transfer other than a gift (within the meaning of section 102 or section 1701).".

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) (relating to addition to tax) is amended by inserting "section 4022 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) NEGLIGENCE PENALTY.—Section 6653(a) (relating to negligence or intentional disregard of rules and regulations) is amended—

(A) by inserting ", by chapter 30 (relating to Superfund excise tax)," after "subtitle B" in paragraph (1) thereof, and

(B) by striking out "Windfall Profit" in the heading thereof and inserting in lieu thereof "Certain Excise".

(3) FAILURE TO MAKE DEPOSITS.—Section 6656 (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4001, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4001 during the taxable period on taxable transactions described in paragraph (1) of section 4003(a), or

"(2) the amount of such tax imposed during the preceding taxable period determined on an annual basis.

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting before the item relating to chapter 31 the following new item:

"CHAPTER 30. Superfund Excise Tax.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods beginning after December 31, 1985.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles entered, or withdrawn from warehouse, for consumption after December 31, 1985.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING JANUARY 1, 1986.—In the case of any taxable period which begins before January 1, 1986, and ends after January 1, 1986, the tax imposed by section 4001 of the Internal Revenue Code of 1954 (and the credit allowable under section 4013 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after December 31, 1985, bears to

(B) the number of days in such taxable period.

SEC. 139C. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding at the end thereof the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section, or

"(2) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Superfund amounts equivalent to—

"(A) the taxes received in the Treasury under section 4001 (relating to Superfund excise tax),

"(B) the taxes received in the Treasury under section 4611 or 4661 (relating to taxes on petroleum and certain chemicals),

"(C) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(D) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(E) penalties assessed under title I of CERCLA, and

"(F) punitive damages under section 107(c)(3) of CERCLA.

"(2) Transfer of certain other funds.—There shall be transferred to the Superfund—

"(A) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year, and

"(B) the unobligated balance in the Post-closure Liability Trust Fund as of October 1, 1985.

"(c) EXPENDITURES FROM THE SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 of CERCLA (other than subsection (j) thereof) as in effect on the date of the enactment of the Superfund Improvement Act of 1985, including—

"(A) response costs,

"(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

"(C) claims for injury to, or destruction or loss of, natural resources, and

"(D) related costs described in section 111(c) of CERCLA.

"(2) LIMITATIONS ON EXPENDITURES.—At least 85 per centum of the amounts appropriated to the Superfund shall be reserved—

"(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of CERCLA, and

"(B) for the repayment of advances made under subsection (d), other than advances subject to the limitation of subsection (d)(2)(B).

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATIONS ON ADVANCES TO SUPERFUND.—

"(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts described in paragraph (1) of subsection (b) which will be transferred to the Superfund during the following 12 months.

"(B) ADVANCES FOR CERTAIN COSTS.—The maximum aggregate amount advanced to the Superfund which is outstanding at any one time for purposes of paying costs other than costs described in section 111(a) (1), (2), or (4) of CERCLA shall not exceed 15 percent of the amount of the estimate made under subparagraph (A).

"(C) FINAL REPAYMENT.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before December 31, 1990.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund (or when required by paragraph (2)(C)).

"(B) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Improvement Act of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH CERTAIN CLAIMS ARE TO BE PAID.—If at any time the Superfund is unable (by reason of paragraph (1)) to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.".

(b) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding at the end thereof the following new item:

"Sec. 9505. Hazardous Substance Superfund.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

SEC. 789D. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) REFUND OF UNOBLIGATED BALANCE.—An amount equal to the unobligated balance in the Post-Closure Liability Trust Fund as of October 1, 1985, which is transferred into the Hazardous Substance Superfund pursuant to section 9505(b)(2) of the Internal Revenue Code of 1954, shall be paid out from such Superfund, effective March 1, 1989, as refunds of the taxes paid under section 4681 of such Code (as in effect prior to October 1, 1985), unless, prior to March 1, 1989, congressional action has been taken pursuant to section 107(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such refunds shall be paid on a proportional basis to the amounts of such taxes paid, and without interest.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 789E. INDUSTRIAL DEVELOPMENT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES.

(a) IN GENERAL.—Paragraph (4) of section 103(b) (relating to certain exempt activities) is amended—

(1) by inserting ", facilities subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act for the treatment of hazardous waste," after "solid waste disposal facilities" in subparagraph (E), and

(2) by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the terms 'treatment' and 'hazardous waste' have the meanings given to such terms by section 1004 of the Solid Waste Disposal Act.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 789F. REPORT ON METHODS OF FUNDING SUPERFUND.

Not later than January 1, 1988, the Comptroller General of the United States or his delegate shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to various methods of funding the Hazardous Substances Superfund, including a study of the effect of taxes on the generation and disposal of hazardous wastes.

SEC. 789G. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 12, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

PART 3—TOBACCO PROVISIONS

Subpart A—Tobacco Products Excise Taxes

SEC. 790. INCREASE IN TAX ON CIGARETTES MADE PERMANENT.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out "and before November 15, 1985".

SEC. 791. TAX ON SMOKELESS TOBACCO.

(A) IN GENERAL.—Section 5701 (relating to rate of tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) SMOKELESS TOBACCO.—On smokeless tobacco, manufactured in or imported into the United States, there shall be imposed the following taxes:

"(1) SNUFF.—On snuff, 24 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

"(2) CHEWING TOBACCO.—On chewing tobacco, 8 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.".

(b) CONFORMING AMENDMENTS.—

"(1) The heading of chapter 52 is amended by inserting "SMOKELESS TOBACCO," after "CIGARETTES,".

(2) Section 5702(c) (defining tobacco products) is amended by striking out "and cigarettes" and inserting in lieu thereof ", cigarettes, and smokeless tobacco".

(3) Section 5702(d) (defining manufacturers of tobacco products) is amended by striking out "cigars or cigarettes" each place it appears and inserting in lieu thereof "cigars, cigarettes, or smokeless tobacco".

(4) Section 5702 is amended by adding at the end thereof the following new subsection:

"(n) DEFINITIONS RELATING TO SMOKELESS TOBACCO.—

"(1) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any snuff or chewing tobacco.

"(2) SNUFF.—The term 'snuff' means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

"(3) CHEWING TOBACCO.—The term 'chewing tobacco' means any leaf tobacco that is not intended to be smoked.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to smokeless tobacco removed after September 30, 1985.

Subpart B—Tobacco Program Improvements

FINDINGS AND PURPOSES

SEC. 792. (a) Congress finds that—

(1) the maintenance of a viable tobacco price support and production adjustment program is in the interests of tobacco producers, purchasers of tobacco, persons employed directly or indirectly by the tobacco industry, and the localities and States whose economies and tax bases are dependent on the tobacco industry;

(2) the present tobacco price support program is in jeopardy and in need of reform;

(3) under present law, the levels of price support for tobacco have resulted in market prices for tobacco that are not competitive on the world market;

(4) as a consequence, extremely large quantities of domestic tobacco have been put under loan and placed in the inventories of the producer-owned cooperative marketing associations that administer the tobacco price support program;

(5) the increased inventories have led to a significant increase in the assessments producers are required to pay to maintain the tobacco price support program on a "no net cost" basis;

(6) such increasingly large assessments are creating a severe hardship on producers;

(7) the existence of such large inventories poses a threat to the orderly marketing of future crops of tobacco;

(8) inventories of producer associations must be significantly reduced or the tobacco price support program will collapse;

(9) the Commodity Credit Corporation is threatened with substantial losses on disposition of these inventories should the tobacco price support program collapse;

(10) it is imperative that such excess inventories of tobacco be disposed of under the supervision of the Secretary of Agriculture, in a manner that—

(A) will not disrupt the orderly marketing of new tobacco crops;

(B) will minimize any losses to the Federal Government; and

(C) will be fair and equitable to all tobacco producers and purchasers;

(11) the mutual cooperation of tobacco producers, tobacco purchasers, producer associations, and the Secretary of Agriculture is necessary—

(A) to restore the tobacco price support program to a stable condition; and

(B) to prevent substantial losses to taxpayers that would result from the collapse of the program;

(12) restoration of stability to the tobacco price support program through a sharing of the cost of that program by purchasers of tobacco along with producers of tobacco is necessary to prevent undue burdens on, or obstruction of, interstate and foreign commerce in tobacco; and

(13) the system of grading tobacco should be thoroughly reviewed to ensure that grades are assigned to tobacco that properly state the quality of such tobacco.

(b) The purposes of this subpart are—

(1) to encourage cooperation among tobacco producers, tobacco purchasers, and the Secretary of Agriculture in reducing tobacco price support levels, assessment costs, the size of inventories of producer associations, and the exposure of taxpayers to large budget outlays;

(2) to adjust the method by which price support levels and production quotas are calculated to reflect actual market conditions;

(3) to facilitate the purchase and sale of Flue-cured and Burley tobacco presently in the inventories of producer associations through which producers of Flue-cured and Burley tobacco are provided price support;

(4) to provide that purchasers and producers of domestic tobacco share equally in the cost of maintaining the tobacco price support program at no net cost to the taxpayers; and

(5) to expedite reform of the system of grading tobacco so that grades assigned to tobacco more accurately reflect the quality of such tobacco.

PRICE SUPPORT ADJUSTMENTS

SEC. 792A. (a) Effective for the 1985 and subsequent crops of tobacco, section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended—

(1) by striking out "and for the 1985 crop of any kind of tobacco (other than Flue-cured and Burley tobacco) for which marketing quotas are in effect or are not disapproved by producers" in the first sentence of paragraph (3); and

(2) by striking out paragraph (4) and inserting in lieu thereof the following new paragraphs:

"(4) For the 1985 crop of Burley tobacco, the support level shall be $1.440 per pound.

"(5)(A) Except as provided in subparagraph (B), for the 1985 and each subsequent crop of any kind of tobacco (other than Flue-cured and Burley tobacco) for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, the amount by which—

"(i) the support level for the crop for which the determination is being made, as determined under subsection (b), is greater or less than

"(ii) the support level for the immediately preceding crop, as determined under subsection (b),

as that difference may be adjusted by the Secretary under subsection (d) if the support level under clause (i) is greater than the support level under clause (ii).

"(B) Notwithstanding subparagraph (A) and subsection (d), if requested by the board of directors of an association through which price support for the respective kind of tobacco specified in subparagraph (A) is made available to producers, the Secretary may reduce the support level for such kind of tobacco to the extent requested by the association to more accurately reflect the market value and improve the marketability of such tobacco.

"(6)(A) For the 1986 and each subsequent crop of Flue-cured and Burley tobacco for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of—

"(i) 66.7 percent of the amount by which—

"(I) the average price received by producers for Flue-cured and Burley tobacco, respectively, on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

"(II) the average price received by producers for Flue-cured and Burley tobacco, respectively, on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period;

"(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from

January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

"(B) For purposes of subparagraph (A)—

"(i) the average market price for Burley tobacco for the 1984 and each prior applicable marketing year shall be reduced by $0.30 per pound;

"(ii) the average market price for Flue-cured tobacco for the 1985 and each prior applicable marketing year shall be reduced by $0.30 per pound;

"(iii) the support level for the 1985 crop of Flue-cured tobacco shall be considered to be $1.399 per pound; and

"(iv) the index of prices paid by tobacco producers shall include items representing general, variable costs of producing tobacco, as determined by the Secretary, but shall not include the cost of land, risk, overhead, management, purchase or leasing of quotas, marketing contributions or assessments, and other costs not directly related to the production of tobacco.".

(b) Effective for the 1986 and subsequent crops of tobacco, section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is further amended by striking out subsection (g).

DETERMINATION OF MARKETING QUOTAS FOR FLUE-CURED AND BURLEY TOBACCO

SEC. 792B. (a) Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) by adding at the end of paragraph (14) the following new subparagraphs:

"(C) 'Reserve stock level', in the case of Flue-cured tobacco, shall be the greater of—

"(i) 100,000,000 pounds (farm sales weight); or

"(ii) 15 percent of the national marketing quota for Flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

"(D) 'Reserve stock level', in the case of Burley tobacco, shall be the greater of—

"(i) 50,000,000 pounds (farm sales weight); or

"(ii) 15 percent of the national marketing quota for Burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined."; and

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

"(17) 'Domestic manufacturer of cigarettes' means a person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States.".

(b) Section 317(a)(1) of such Act (7 U.S.C. 1314c(a)(1)) is amended—

(1) by striking out "'National marketing quota'" in the first sentence and inserting in lieu thereof "(A) Except as provided in subparagraph (B), 'national marketing quota'"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) For the 1986 and each subsequent crop of Flue-cured tobacco, 'national marketing quota' for a marketing year means the quantity of Flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(i) the aggregate of the quantities of Flue-cured tobacco that domestic manufacturers of cigarettes estimate the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(ii) the average annual quantity of Flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(iii) the quantity, if any, of Flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured tobacco to establish or maintain such inventory at the reserve stock level for Flue-cured tobacco.

"(C) In determining the quantity of Flue-cured tobacco necessary to establish or maintain the inventory of the producer association at the reserve stock level under subparagraph (B)(iii), the Secretary shall provide for attaining the reserve stock level over a period of 5 years.".

(c) Section 319 of such Act (7 U.S.C. 1314e) is amended—

(1) in subsection (c)—

(A) by striking out "The national marketing quota" in the first sentence and inserting in lieu thereof "(1) Except as provided in paragraph (3), the national marketing quota";

(B) by striking out the second sentence;

(C) by designating the third sentence as paragraph (2); and

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

"(3)(A) For the 1986 and each subsequent crop of Burley tobacco, the national marketing quota for any marketing year shall be the quantity of Burley tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(i) the aggregate of the quantities of Burley tobacco that domestic manufacturers of cigarettes estimate the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(ii) the average annual quantity of Burley tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(iii) the quantity, if any, of Burley tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventories of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Burley tobacco to establish or maintain such inventories, in the aggregate, at the reserve stock level for Burley tobacco.

"(B) In determining the quantity of Burley tobacco necessary to establish or maintain the inventories of the producer associations at the reserve stock level under subparagraph (A)(iii)—

"(i) the Secretary shall provide for attaining the reserve stock level over a period of 5 years; and

"(ii) any downward adjustment in such inventories of Burley tobacco may not exceed the greater of—

"(I) 35,000,000 pounds; or

"(II) 50 percent of the quantity by which—

"(aa) the total inventories of Burley tobacco of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Burley tobacco; exceed

"(bb) the reserve stock level for Burley tobacco,"; and

(2) by inserting ", except in the case of Burley tobacco," after "Provided, That" in the fourth sentence of subsection (e).

(d) Effective for the 1986 and each subsequent crop of tobacco, such Act is amended by inserting after section 320 (7 U.S.C. 1314f) the following new section:

"SUBMISSION OF PURCHASE INTENTIONS BY CIGARETTE MANUFACTURERS

"SEC. 320A. (a)(1) Not later than December 1 of any marketing year with respect to Flue-cured tobacco (or, in the case of the 1986 crop, December 1, 1985) and January 15 of any marketing year with respect to Burley tobacco (or, in the case of the 1986 crop, January 15, 1986), each domestic manufacturer of cigarettes shall submit to the Secretary a statement, by kind, of the quantity of Flue-cured tobacco and Burley tobacco (for which a national marketing quota is in effect or for which the Secretary has proclaimed a national marketing quota for the next succeeding marketing year) that the manufacturer intends to purchase, directly or indirectly, on the United States auction markets or from producers during the next succeeding marketing year (hereafter in this section referred to as the 'quantity of intended purchases').

"(2) The Secretary shall aggregate the quantities of intended purchases in a manner that will not allow the identification of the quantity of intended purchases of any manufacturer.

"(b) If any domestic manufacturer of cigarettes fails to submit to the Secretary a statement of the quantity of intended purchases of the manufacturer, as required by this section, the Secretary shall establish the quantity of intended purchases to be attributed to such manufacturer for purposes of this Act, based on—

"(1) the quantity of intended purchases submitted by such manufacturer under this section for the marketing year immediately preceding the marketing year for which the determination is being made; or

"(2) if such manufacturer did not submit a statement of the quantity of intended purchases of the manufacturer for the marketing year immediately preceding the marketing year for which the determination is being made, the most recent information available to the Secretary.

"(c)(1) All information relating to the quantity of intended purchases that is submitted by domestic manufacturers of cigarettes under this section shall be kept confidential by all officers and employees of the Department of Agriculture.

"(2) Such information may only be disclosed by such officers or employees in a suit or administrative hearing—

"(A)(i) brought at the direction, or on the request, of the Secretary; or

"(ii) to which the Secretary or any officer of the United States is a party; and

"(B) involving enforcement of this Act.

"(3) Nothing in this section shall be considered to prohibit the publication, by direction of the Secretary, of the name of any person violating this Act, together with a statement of the particular provisions of the Act violated by such person.

"(4) Any officer or employee of the Department of Agriculture who violates this subsection, on conviction, shall be—

"(A) subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or to both; and

"(B) removed from office.

"(d) Notwithstanding any other provision of law, a statement of the quantity of intended purchases that is submitted under this section shall be exempt from disclosure under section 552 of title 5, United States Code.".

MARKETING QUOTA ANNOUNCEMENT DATE

SEC. 792C. (a) Section 312 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312) is amended—

(1) by striking out "and February 1 of any marketing year with respect to other kinds

of tobacco" in the matter preceding clause (1) of subsection (a) and inserting in lieu thereof "February 1 of any marketing year with respect to Burley tobacco, and March 1 of any marketing year with respect to other kinds of tobacco"; and

(2) by striking out "and not later than the first day of February with respect to other kinds of tobacco" in the first sentence of subsection (b) and inserting in lieu thereof ", not later than the first day of February with respect to Burley tobacco, and not later than the first day of March with respect to other kinds of tobacco".

(b) Section 319(b) of such Act (7 U.S.C. 1313e(b)) is amended by striking out "February 1" each place it appears in the fourth paragraph and inserting in lieu thereof "March 1".

REDUCTION IN EXCESS TOBACCO NOT SUBJECT TO MARKETING PENALTY

SEC. 792D. (a) Effective for the 1986 and subsequent crops of tobacco, the Agricultural Adjustment Act of 1938 is amended—

(1) by striking out "110" in section 317(g)(1) (7 U.S.C. 1314c(g)(1)) and inserting in lieu thereof "103"; and

(2) by striking out "110" in section 319(i)(1) (7 U.S.C. 1314e(i)(1)) and inserting in lieu thereof "103".

(b) Effective for the 1986 and subsequent crops of tobacco, section 106(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445(c)(1)) is amended by striking out "110" and inserting in lieu thereof "103".

PURCHASE REQUIREMENTS; PENALTY

SEC. 792E. (a) Effective for the 1986 and subsequent crops of tobacco, the Agricultural Adjustment Act of 1938 (as amended by section 792B(d)) is further amended by inserting after section 320A the following new section:

"PURCHASE REQUIREMENTS; PENALTY

"SEC. 320B. (a)(1) At the conclusion of each marketing year, on or before a date prescribed by the Secretary, each domestic manufacturer of cigarettes shall submit to the Secretary a statement, by kind, of the quantity of Flue-cured and Burley quota tobacco purchased, directly or indirectly, by such manufacturer during such marketing year.

"(2) The statement shall include, but not be limited to, the quantity of each such kind of tobacco purchased by the manufacturer on the United States auction markets, from producers, and from the inventories of tobacco from the 1985 and subsequent crops of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Flue-cured or Burley tobacco.

"(b)(1) Except as otherwise provided in this subsection, any domestic manufacturer of cigarettes that fails, as determined by the Secretary after notice and opportunity for a hearing, to purchase during a marketing year on the United States auction markets, from producers, or from the inventories of tobacco from the 1985 and subsequent crops of the producer associations described in subsection (a)(2) a quantity of Flue-cured quota tobacco and a quantity of Burley quota tobacco equal to at least 90 percent of the quantity of the intended purchases of Flue-cured tobacco and Burley tobacco, respectively, submitted by such manufacturer or established by the Secretary for such manufacturer for that marketing year under section 320A (as that quantity may be reduced under paragraph (2)) shall be subject to a penalty as prescribed in subsection (c).

"(2)(A) If the total quantity of Flue-cured or Burley quota tobacco, respectively, marketed by producers at auction in the United States during the marketing year in question is less than the national marketing quota (including any adjustments for overmarketings or undermarketings) for that kind of tobacco for that marketing year, the quantity of intended purchases of each domestic manufacturer of cigarettes, for purposes of paragraph (1), shall be reduced by a percentage equal to the percentage by which the total quantity marketed at auction in the United States during the marketing year is less than the national marketing quota (including any adjustments for overmarketings or undermarketings) for that kind of tobacco for the marketing year.

"(B) For purposes of this section, the term 'marketed' shall include disposition of tobacco by consigning the tobacco to a producer association described in subsection (a)(2) for a price support advance.

"(c) The amount of any penalty to be imposed on a manufacturer under this section shall be determined by multiplying—

"(1) twice the per pound assessment (as determined under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1 or 1445-2)) for the kind of tobacco involved; by

"(2) the quantity by which—

"(A) the purchases by such manufacturer on the United States auction markets, from producers, or from the inventories of tobacco from the 1985 and subsequent crops of the producer associations described in subsection (a)(2) of Flue-cured and Burley quota tobacco, respectively, for the marketing year; are less than

"(B) 90 percent of the quantity of intended purchases of such kinds of tobacco, respectively, submitted by the manufacturer or established by the Secretary for such manufacturer for that marketing year under section 320A (as that quantity may be reduced under subsection (b)(2)).

"(d)(1) An amount equivalent to the penalty collected by the Secretary under this section shall be transmitted by the Secretary to the appropriate producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured or Burley tobacco, as the case may be.

"(2) Each association to which amounts are transmitted by the Secretary under this section shall deposit such amounts in the No Net Cost Fund or Account of such association in accordance with section 106A or 106B of the Agricultural Act of 1949.

"(e) Subsections (c) and (d) of section 320A shall apply to information submitted by domestic manufacturers of cigarettes under this section with respect to the quantity of purchases of Flue-cured and Burley quota tobacco during a marketing year.

"(f) As used in this section, the term 'quota tobacco' means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.".

(b) Effective for the 1986 and subsequent crops of tobacco, the last sentence of section 372(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1372(b)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 320B, the".

ASSESSMENTS TO NO NET COST FUNDS OR ACCOUNTS

SEC. 792F. (a) Effective for the 1986 and subsequent crops of tobacco, section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1) is amended—

(1) in subsection (a)—

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

(B) by redesignating paragraph (6) as paragraph (7); and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) the term 'purchaser' means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, Flue-cured or Burley quota tobacco; and";

(2) by inserting "or paid by or on behalf of purchasers" after "producer-members" in the second sentence of subsection (c);

(3) in subsection (d)—

(A) by striking out "and" at the end of clause (i) of paragraph (1)(A);

(B) by inserting after clause (ii) of paragraph (1)(A) the following new clause:

"(iii) each purchaser of Flue-cured and Burley quota tobacco shall pay to the appropriate association, for deposit in the Fund of the association, an assessment, in an amount determined from time to time by the association with the approval of the Secretary, with respect to purchases of all such kind of tobacco marketed by a producer from a farm (including purchases of such tobacco from the 1986 and subsequent crops from the association); and";

(C) by striking out "The" in the last sentence of paragraph (1) and inserting in lieu thereof the following: "The amount of producer contributions and purchaser assessments shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining the Fund of an association. In making such determination with respect to the assessment of a purchaser, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco shall be taken into account. The";

(D) by inserting "and assessments" after "contributions" in the last sentence of paragraph (1);

(E) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) require that any producer contribution or purchaser assessment due under paragraph (1) shall be collected—

"(A) from the person who acquired the tobacco involved from the producer, except that if the tobacco is marketed by sale, an amount equal to the producer contribution may be deducted by the purchaser from the price paid to such producer;

"(B) if the tobacco involved is marketed by a producer through a warehouseman or agent, from such warehouseman or agent, who may—

"(i) deduct an amount equal to the producer contribution from the price paid to the producer; and

"(ii) add an amount equal to the purchaser assessment to the price paid by the purchaser; and

"(C) if the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer, who may add an amount equal to the purchaser assessment to the price paid by the purchaser.";

(F) by striking out "producers who contribute" in the proviso of paragraph (3) and inserting in lieu thereof "producers and purchasers who contribute or pay";

(G) by striking out "and" at the end of paragraph (5);

(H) by inserting "effective for the 1982 through 1985 crops of quota tobacco," after the paragraph designation in paragraph (6);

(I) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(J) by inserting after paragraph (6) the following new paragraph:

"(7) effective for the 1986 and subsequent crops of quota tobacco, provide, in loan agreements between the Corporation and an association, that if the Secretary determines that the amount in the Fund or the net

gains referred to in paragraph (5) exceeds the amounts necessary for the purposes specified in this section, the association, with the approval of the Secretary, may suspend the payment and collection of contributions and assessments under this section on terms and conditions established by the association, with the approval of the Secretary."; and

(4) by adding at the end thereof the following new subsection:

"(h)(1)(A) Each person who fails to collect any contribution or assessment as required by subsection (d)(2) and remit such contribution or assessment to the association, at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(B) The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(C) Any penalty provided for under this paragraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(2)(A) Any person against whom a penalty is assessed under this subsection may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after such penalty is imposed.

"(B) The Secretary shall promptly file in such court a certified copy of the record on which the penalty is based.

"(3) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under this subsection.

"(4) An amount equivalent to any penalty collected by the Secretary under this subsection shall be transmitted by the Secretary to the appropriate association, for deposit in the Fund of such association.

"(5) The remedies provided in this subsection shall be in addition to, and not exclusive of, other remedies that may be available.".

(b) Effective for the 1986 and subsequent crops of tobacco, section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-2) is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (6);

(B) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

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

"(8) the term 'purchaser' means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, Flue-cured or Burley quota tobacco.";

(2) by inserting "and purchasers" after "producers" in subsection (c)(1);

(3) in subsection (d)—

(A) by inserting at the end of paragraph (1) the following new sentence: "The Secretary shall also require (in lieu of any requirement under section 106A(d)(1)) that each purchaser of Flue-cured and Burley quota tobacco shall pay to the Corporation, for deposit in the Account of such association, an assessment, as determined under paragraph (2) and collected under paragraph (3), with respect to purchases of all such kind of tobacco marketed by a producer from a farm (including purchases of such tobacco from the 1986 and subsequent crops from the association).";

(B) by striking out "area. Such amount" in paragraph (2) and inserting in lieu thereof "area and the amount of the assessment to be paid by purchasers of tobacco. The amount of the assessment to be paid by producers and purchasers shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining the Account of an association. In making such determination with respect to the assessment of a purchaser, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco shall be taken into account. The amount of the assessment";

(C) by inserting at the end of paragraph (2) the following: "Notwithstanding the foregoing provisions of this paragraph, the amount of any assessment that is determined by the Secretary for the 1986 and subsequent crops of Burley quota tobacco shall be determined without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with such association with respect to the 1983 crop of such tobacco."; and

(D) by amending paragraph (3) to read as follows:

"(3)(A) Except as provided in subparagraphs (B) and (C), any assessment to be paid by a producer or a purchaser under paragraph (1) shall be collected from the person who acquired the tobacco involved from such producer, except that if the tobacco is marketed by sale, an amount equal to the producer assessment may be deducted by the purchaser from the price paid to such producer.

"(B) If tobacco of the kind for which an Account is established is marketed by a producer through a warehouseman or agent, both the producer and the purchaser assessment shall be collected from such warehouseman or agent, who may—

"(i) deduct an amount equal to the producer assessment from the price paid to the producer; and

"(ii) add an amount equal to the purchaser assessment to the price paid by the purchaser.

"(C) If tobacco of the kind for which an Account is established is marketed by a producer directly to any person outside the United States, both the producer and the purchaser assessment shall be collected from the producer, who may add an amount equal to the purchaser assessment to the price paid by the purchaser."; and

(4) by adding at the end thereof the following new subsection:

"(j)(1)(A) Each person who fails to collect any assessment as required by subsection (d)(3) and remit such assessment to the Corporation, at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(B) The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(C) Any penalty provided for under this paragraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(2)(A) Any person against whom a penalty is assessed under this subsection may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after such penalty is imposed.

"(B) The Secretary shall promptly file in such court a certified copy of the record on which the penalty is based.

"(3) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under this subsection.

"(4) An amount equivalent to any penalty collected by the Secretary under this subsection shall be transmitted by the Secretary to the Corporation, for deposit in the Account of the appropriate association.

"(5) The remedies provided in this subsection shall be in addition to, and not exclusive of, other remedies that may be available.".

(c) The Secretary of Agriculture shall implement sections 792A through 792G, and the amendments made by such sections, without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code, or in any directive of the Secretary.

(d) The section heading of section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1) is amended to read as follows:

"PRODUCER CONTRIBUTIONS AND PURCHASER ASSESSMENTS FOR NO NET COST TOBACCO FUND".

PURCHASE OF INVENTORY STOCK

SEC. 792G. Notwithstanding any other provision of law, in order to reduce or eliminate the excessive inventories of Flue-cured and Burley tobacco held by associations from the 1976 through 1984 crops, and in order to provide for the orderly disposition of such excessive inventories of tobacco in a manner that will not disrupt the orderly marketing of new tobacco crops and minimize any losses to the Federal Government:

(a)(1) The producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured tobacco shall offer to sell the stocks of Flue-cured tobacco of the association from the 1976 through 1984 crops as provided in this section.

(2) Each producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Burley tobacco shall offer to sell its stocks of Burley tobacco from the 1982 and 1984 crops as provided in this section.

(3)(A)(i) Not later than 30 days after the date of enactment of this subpart, the Commodity Credit Corporation shall acquire title to the Burley tobacco from the 1983 crop that is pledged as security for loans on such tobacco by calling the loans on such tobacco.

(ii) The Corporation shall, then, offer such tobacco for sale at such times, in such quantities, and subject to such conditions as the Corporation considers appropriate.

(B) If the Commodity Credit Corporation has not sold all of the stocks of the 1983 crop of Burley tobacco within 2 years from the date the Corporation calls the loans on such tobacco, the Corporation may offer to sell to domestic manufacturers of cigarettes the remaining stocks of such tobacco as provided in this section.

(b)(1)(A) The stocks of Flue-cured tobacco from the 1976 through 1984 crops shall be offered for sale at the base prices, including carrying charges, in effect as of the date of the offer, reduced by—

(i) 90 percent for Flue-cured tobacco from the 1976 through 1981 crops; and

(ii) 10 percent for Flue-cured tobacco from the 1982 through 1984 crops.

(B) The purchasers of the stocks of Flue-cured tobacco from the 1976 through 1984 crops shall pay the full carrying charges that have accrued to such tobacco from the date of the offer made under this section to the date that such tobacco is removed from the inventory of the association.

(2)(A) The stocks of Burley tobacco from the 1982 crop shall be offered for sale at the listed base price in effect as of July 1, 1985.

(B) The stocks of Burley tobacco from the 1984 crop shall be offered for sale at the costs of the association for such tobacco as of the date of enactment of this subpart.

(C) The purchasers of the stocks of Burley tobacco from the 1982 crop shall pay the full carrying charges that have accrued to such tobacco.

(D) The purchasers of the stocks of Burley tobacco from the 1984 crop shall pay the full carrying charges that have accrued to such tobacco from the date of enactment of this subpart to the date such tobacco is removed from the inventories of the associations.

(3)(A) After the 2-year period specified in subsection (a)(3)(B) has expired, if the Commodity Credit Corporation offers to sell the stocks of the Corporation of Burley tobacco from the 1983 crop to domestic manufacturers of cigarettes, such stocks shall be offered for sale at the costs of the association, including carrying charges, as of the date on which the Corporation calls the loans on such tobacco, reduced by 90 percent.

(B) Neither tobacco producers nor tobacco purchasers shall be responsible for carrying charges that accrue to the 1983 crop Burley tobacco after the date on which the Commodity Credit Corporation calls the loans on such tobacco.

(c)(1)(A) Each domestic manufacturer of cigarettes may enter into agreements to purchase inventory stocks of Flue-cured and Burley tobacco, in accordance with this section.

(B) To be eligible for the reductions in price specified in this section, such manufacturer shall enter into such agreements as soon as practicable, but not later than 90 days, after the date of enactment of this subpart.

(C)(i) Such agreements shall provide that, over a period of time, each participating domestic manufacturer of cigarettes shall purchase a percentage of the stocks of Flue-cured and Burley tobacco held—

(I) by the producer-owned cooperative marketing associations at the close of the 1984 marketing year; or

(II) in the case of the 1983 crop of Burley tobacco, by the Commodity Credit Corporation at the time the Corporation offers such tobacco for sale to domestic manufacturers of cigarettes under this section.

(ii) The period of time referred to in clause (i) may not exceed—

(I) in the case of Flue-cured tobacco, 8 years from the date of enactment of this subpart;

(II) in the case of Burley tobacco from the 1982 and 1984 crops, 5 years from the date of enactment of this subpart; and

(III) in the case of the 1983 crop of Burley tobacco, 5 years from the end of the 2-year period referred to in subsection (a)(3)(B).

(2)(A)(i) The percentage to be purchased by each participating manufacturer shall be at least equal to the respective percentage of the participating manufacturer of the total quantity of net cigarettes manufactured for use as determined by the Secretary of Agriculture under this paragraph on the basis of the monthly reports ("Manufacturer of Tobacco Products—Monthly Reports") submitted (on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

(ii) The Secretary of Agriculture shall request from the Secretary of the Treasury copies of such monthly reports necessary to make the determinations required under this section.

(iii) Notwithstanding any other provision of law, the Secretary of the Treasury may release and disclose such information to the Secretary of Agriculture.

(B) "Net cigarettes manufactured for use" shall be computed by subtracting—

(i) the cumulative figures entered for large and small cigarettes in item 16f of ATF Form 3068 ("Reduction to tobacco"); from

(ii) the cumulative figures entered for large and small cigarettes in item 7 of such form ("Manufactured").

(C)(i) The percentage to be purchased by each participating manufacturer shall be determined—

(I) on the date of enactment of this subpart; and

(II) annually thereafter over the course of the respective buy-out periods specified in this subsection.

(ii) Such percentage shall be determined by dividing—

(I) the average net cigarettes manufactured by a manufacturer for use for the 12-month period immediately preceding the appropriate determination date (the date of enactment of this subpart and annually thereafter over the course of the respective buy-out periods specified in this subsection); by

(II) the aggregate average net cigarettes manufactured by all domestic cigarette manufacturers for use for such 12-month period.

(D)(i) The quantity of tobacco to be purchased by each participating manufacturer shall be determined annually.

(ii) Such quantity shall be based on—

(I) the percentage of net cigarettes of a manufacturer manufactured for use, as determined under subparagraph (C); multiplied by

(II) the appropriate annual quantity to be withdrawn from the inventories of the associations or the Commodity Credit Corporation.

(iii) The appropriate annual quantity to be withdrawn from inventories shall be—

(I) 12½ percent of the inventories of Flue-cured tobacco from the 1976 through 1984 crops on hand on the date of enactment of this subpart;

(II) 20 percent of the inventories of Burley tobacco from the 1982 and 1984 crops on hand on the date of enactment of this subpart; and

(III) 20 percent of the inventories of Burley tobacco from the 1983 crop held by the Commodity Credit Corporation on the date that is 2 years after the call of the loans on such tobacco by the Corporation.

(E) Any purchases by a manufacturer from the inventories of the associations or from the Commodity Credit Corporation for a crop covered by this section in any year of the buy-out period that exceed the quantity of the purchases of the manufacturer required under the agreement, as determined under this section, shall be applied against future purchases required of such manufacturer.

(3) In carrying out this section, manufacturers may confer with one another and, separately or collectively, with associations, the Secretary of Agriculture, and the Commodity Credit Corporation, as may be necessary or appropriate to carry out this section and the purposes of this subpart.

(d)(1)(A) Each agreement entered into under this section shall be submitted to the Secretary of Agriculture for review and approval.

(B) In the case of an agreement to purchase tobacco from the inventory of a producer association, the agreement shall be submitted by the association.

(C) No agreement may become effective until approved by the Secretary.

(2) The Secretary of Agriculture shall not approve any agreement submitted under this section unless the Secretary has determined that—

(A) the agreement—

(i) will not unduly impair or disrupt the orderly marketing of current and future tobacco crops during the term of the agreement; and

(ii) is otherwise consistent with the purposes of this subpart; and

(B) the price and other terms of sale are uniform and nondiscriminatory among various purchasers.

(e) Subsections (c) and (d) of section 320A of the Agricultural Adjustment Act of 1938 (as added by section 792B(d)) shall apply to information submitted by domestic manufacturers of cigarettes under this section with respect to net cigarettes manufactured for use, including information provided on ATF Form 3068.

REVIEW OF TOBACCO GRADING SYSTEM AND DISASTER CROP DESIGNATION

SEC. 792H. (a)(1)(A) The Secretary of Agriculture shall conduct a comprehensive study of the methods and procedures for grading tobacco marketed in the United States.

(B) In carrying out such study, the Secretary shall evaluate, among other things—

(i) the extent to which grades assigned to tobacco accurately reflect the quality of such tobacco;

(ii) the extent to which the number of grades of tobacco affects the operation of the grading system; and

(iii) the competence and independence of tobacco graders.

(2) The Secretary shall also study the feasibility and desirability of—

(A) providing for a grade that would be used to designate tobacco that is of such poor quality as a result of a natural disaster as to affect substantially the marketability of such tobacco; and

(B) establishing a price support level, if any, for such tobacco that may be adjusted by the Secretary as necessary to facilitate the sale of such tobacco and protect the no net cost funds or accounts.

(b)(1) Not later than 120 days after the date of enactment of this subpart, the Secretary of Agriculture shall report the results of the studies required under subsection (a), together with any recommendations for necessary legislation, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) As soon as practicable after submission of the report required under paragraph (1), but not later than the opening of the marketing season for the 1986 crop of Flue-cured tobacco, the Secretary shall implement any recommendations made in such report that may be implemented by the Secretary under existing authority.

INVESTMENT OF TOBACCO INSPECTION FEES

SEC. 792I. Section 5 of The Tobacco Inspection Act (7 U.S.C. 511d) is amended—

(1) by inserting "late payment penalties, and interest earned from the investment of such funds," after "The fees and charges," in the ninth sentence;

(2) by inserting after the ninth sentence the following new sentences: "Any funds realized from the collection of fees or charges authorized under this section and section 6 and credited to the current appropriation account incurring the cost of services pro-

vided under this section and section 6, late payment penalties, and interest earned from the investment of such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any income realized from this activity may be used to pay the expenses of the Secretary of Agriculture incident to providing services under this Act or reinvested in the manner authorized in the preceding sentence."; and

(3) by striking out "Such fees and charges" in the tenth sentence (as it existed before the amendment made by clause (2)) and inserting in lieu thereof "The fees and charges authorized in this section".

EFFECTIVE DATE

SEC. 792J. Except as otherwise provided in this subpart, this subpart and the amendments made by this subpart shall become effective on the date of enactment of this subpart.

PART 4—EMPLOYMENT TAX PROVISIONS

SEC. 793. MEDICARE COVERAGE OF, AND APPLICATION OF HOSPITAL INSURANCE TAX TO, STATE AND LOCAL GOVERNMENTAL EMPLOYMENT.

(a) APPLICATION OF HOSPITAL INSURANCE TAX TO STATE AND LOCAL GOVERNMENTAL EMPLOYMENT.—

(1) IN GENERAL.—Subsection (u) of section 3121 (relating to definitions) is amended to read as follows:

"(u) APPLICATION OF HOSPITAL INSURANCE TAX TO FEDERAL, STATE, AND LOCAL GOVERNMENTAL EMPLOYMENT.—

"(1) IN GENERAL.—The taxes imposed by sections 3101(b) and 3111(b) shall apply to medicare qualified governmental employment.

"(2) MEDICARE QUALIFIED GOVERNMENTAL EMPLOYMENT.—The terms 'medicare qualified governmental employment' means any service which is medicare qualified Federal employment (as defined in paragraph (3)) or medicare qualified State and local governmental employment (as defined in paragraph (4)).

"(3) MEDICARE QUALIFIED FEDERAL EMPLOYMENT.—Medicare qualified Federal employment means any service which would constitute 'employment' as defined in subsection (b) but for the application of subsection (b)(5).

"(4) MEDICARE QUALIFIED STATE AND LOCAL GOVERNMENTAL EMPLOYMENT.—Medicare qualified State and local governmental employment means any service which would constitute 'employment' as defined in subsection (b) but for the application of subsection (b)(7), and which is not covered pursuant to an agreement under section 218 of the Social Security Act.".

(2) CONFORMING AMENDMENTS.—

(A) The second sentence of section 1402(b) is amended by striking out "medicare qualified Federal employment" in subparagraph (C) thereof and inserting in lieu thereof "medicare qualified governmental employment".

(B) Section 3122 is amended by striking out "3121(u)(2)" and inserting in lieu thereof "3121(u)(3)".

(C)(i) Section 3125 is amended by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d), respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

"(a) STATES AND POLITICAL SUBDIVISIONS.—Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to medicare qualified State and local governmental employment performed in the employ of a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such employment, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).".

(ii) The section heading for such section 3125 is amended by inserting "STATES AND POLITICAL SUBDIVISIONS," before "GUAM".

(iii) The item relating to section 3125 in the table of sections for subchapter C of chapter 21 is amended by inserting "States and political subdivisions," before "Guam".

(D) Section 6205(a) is amended by adding at the end thereof the following new paragraph:

"(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall be deemed a separate employer.".

(E)(i) Section 6413(a) is amended by adding at the end thereof the following new paragraph:

"(6) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of any agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall be deemed a separate employer.".

(ii) Section 6413(c)(2) is amended—

(I) by striking out "3125(a)", "3125(b)", and "3125(c)" in subparagraphs (D), (E), and (F), respectively, and inserting in lieu thereof "3125(b)", "3125(c)", and "3125(d)", respectively, and

(II) by adding at the end thereof the following new subparagraph:

"(G) EMPLOYERS OF STATES AND POLITICAL SUBDIVISIONS.—In the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.".

(3) REGULATIONS.—Taxes paid under sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 by States or political subdivisions thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) with respect to medicare qualified State and local governmental employment shall be collected pursuant to the regulations issued by the Secretary of the Treasury under section 6302 of such Code in the same manner as if such entity was a private employer.

(b) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—

(1) DEFINITION.—Section 210(p) of the Social Security Act is amended to read as follows:

"Medicare Qualified Governmental Employment

"(p)(1) For purposes of sections 226 and 226A, the term 'medicare qualified governmental employment' means any service which is medicare qualified Federal employment (as defined in paragraph (2)) or medicare qualified State and local governmental employment (as defined in paragraph (3)).

"(2) Medicare qualified Federal employment means any service which would constitute 'employment' as defined in subsection (a) but for the application of subsection (a)(5).

"(3) Medicare qualified State and local governmental employment means any service which would constitute 'employment' as defined in subsection (a) but for the application of subsection (a)(7), and which is not covered pursuant to an agreement under section 218.".

(2) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—Sections 226(a)(2)(C)(i), 226(b)(2)(C)(ii)(I), 226A(a)(1)(A)(ii), and 226A(a)(1)(B)(iii) of the Social Security Act are each amended by striking out "medicare qualified Federal employment (as defined in section 210(p))" and inserting in lieu thereof in each instance "medicare qualified governmental employment (as defined in section 210(p)(1))".

(3) CONFORMING AMENDMENTS.—Section 1811 of the Social Security Act is amended by striking out "Federal employment" each place it appears in clauses (1) and (2), and inserting in lieu thereof in each instance "governmental employment".

(c) EFFECTIVE DATES.—

(1) HOSPITAL INSURANCE TAXES.—The amendments made by subsection (a) shall apply to service performed after September 30, 1986.

(2) MEDICARE COVERAGE.—

(A) IN GENERAL.—The amendments made by subsection (b) are effective on and after October 1, 1986, and the amendments made by paragraph (2) of that subsection apply to service performed after September 30, 1986.

(B) TREATMENT OF CURRENT DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to the amendments made by subsection (b) or the provisions of subsection (d), on the basis of medicare qualified State and local employment, no individual may be considered to be under a disability for any period before October 1, 1986.

(d) TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who—

(A) performs service during October 1986 which constitutes medicare qualified State and local governmental employment (as defined in section 210(p)(1) of such Act); and

(B) performed service prior to October 1, 1986, which would constitute medicare qualified State and local governmental employment if performed after October 1, 1986,

such individual's State and local governmental employment performed before October 1, 1986, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.

(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1) of this subsection,

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

SEC. 794. RAILROAD UNEMPLOYMENT INSURANCE REFORM.

(a) RATE OF RAILROAD UNEMPLOYMENT REPAYMENT TAX.—Subsection (c) of section 3321 (relating to rate of railroad unemployment repayment tax) is amended to read as follows:

"(c) RATE OF TAX.—For purposes of this section—

"(1) IN GENERAL.—The applicable percentage for any taxable period shall be the sum of—

"(A) the basic rate for such period, and

"(B) the surtax rate (if any) for such period

"(2) BASIC RATE.—For purposes of paragraph (1)—

"(A) For periods before 1989.—The basic rate shall be—

"(i) 4.3 percent for the taxable period beginning on July 1, 1986, and ending on December 31, 1986,

"(ii) 4.7 percent for the 1987 taxable period, and

"(iii) 6 percent for the 1988 taxable period.

"(B) For periods after 1988.—For any taxable period beginning after December 31, 1988, the basic rate shall be the sum of—

"(i) 2.9 percent, plus

"(ii) 0.3 percent for each preceding taxable period after 1988.

In no event shall the basic rate under this subparagraph exceed 5 percent.

"(3) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

"(A) 3.5 percent for any taxable period if, as of September 30 of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

"(B) zero for any other taxable period.

"(4) BASIC RATE NOT TO APPLY TO RAIL WAGES PAID AFTER SEPTEMBER 30, 1990.—The basic rate under paragraph (1)(A) shall not apply to rail wages paid after September 30, 1990.".

(b) BASE OF TAX TO BE COMPENSATION USED FOR RAILROAD RETIREMENT TAX PURPOSES.—Subsection (b) of section 3323 (defining rail wages) is amended to read as follows:

"(b) RAIL WAGES.—

"(1) IN GENERAL.—For purposes of this chapter, the term 'rail wages' means compensation (as defined in section 3231(e) for purposes of the tax imposed by section 3201(a)) with the modifications specified in paragraph (2).

"(2) MODIFICATIONS.—In applying subsection (e) of section 3231 for purposes of paragraph (1)—

"(A) Only employment covered by railroad unemployment insurance act taken into account.—Such subsection (e) shall be applied—

"(i) by substituting 'rail employment' for 'service' each place it appears,

"(ii) by substituting 'rail employer' for 'employer' each place it appears, and

"(iii) by substituting 'rail employee' for 'employee' each place it appears.

"(B) $7,000 WAGE BASE.—Such subsection (e) shall be applied by substituting for 'the applicable base' in paragraph (2)(A)(i) thereof—

"(i) except as provided in clauses (ii) and (iii), '$7,000',

"(ii) '$3,500' for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, and

"(iii) for purposes of applying the basic rate under section 3321(c)(1)(A), '$5,250' for the taxable period beginning on January 1, 1990.

"(C) SUCCESSOR EMPLOYERS.—For purposes of this subsection, rules similar to the rules applicable under section 3231(e)(2)(C) shall apply.".

(c) USE OF TAXES.—

(1) IN GENERAL.—Paragraph (2) of section 232(a) of the Railroad Retirement Revenue Act of 1983 (relating to tax used to repay loans made to railroad unemployment insurance account) is amended to read as follows:

"(2) TAXES CREDITED AGAINST LOANS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT.—

"(A) TAXES ATTRIBUTABLE TO BASIC RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE BEFORE OCTOBER 1, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the basic rate under section 3321(c)(1)(A) of the Internal Revenue Code of 1954 shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made before October 1, 1985.

"(B) TAXES ATTRIBUTABLE TO SURTAX RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE AFTER SEPTEMBER 30, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the surtax rate under section 3321(c)(1)(B) of such Code shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made after September 30, 1985.".

(2) TRANSFERS TO RAILROAD UNEMPLOYMENT FUND AFTER LOAN REPAID.—Subsection (c) of section 232 of such Act is amended—

(A) by striking out "the amount" in paragraph (1) and inserting in lieu thereof "the amount described in subparagraph (A) or (B) of subsection (a)(2)", and

(B) by inserting before the comma at the end of paragraph (2) "against which the amount described in such paragraph may be credited under such subparagraph".

(d) EXTENSION OF AUTHORITY TO BORROW FROM RAILROAD RETIREMENT ACCOUNT; USE OF RETRANSFERS.—

(1) LOAN AUTHORITY EXTENSION.—Section 10(d) of the Railroad Unemployment Insurance Act is amended by striking out the last sentence.

(2) USE OF RETRANSFERS.—Section 10(d) of such Act is amended by inserting after the second sentence the following new sentence: "The amounts retransferred to the Railroad Retirement Account shall first be credited against, and operate to reduce, the outstanding balance of transfers, including interest, made to the railroad unemployment insurance account from the Railroad Retirement Account under this subsection prior to October 1, 1985.".

(e) USE OF 1 PERCENT OF TIER 2 TAXES TO REPAY LOANS.—

(1) IN GENERAL.—Section 10 of the Railroad Unemployment Insurance Act is amended by adding at the end thereof the following new subsection:

"(e) In addition to the moneys credited to the account in accordance with subsections (a) and (d) of this section, there shall, notwithstanding any other law, be credited to the account, and the Secretary of the Treasury is directed to so credit, such part of the amount appropriated to the Railroad Retirement Account attributable to the taxes collected under sections 3211(a)(2) and 3221(b) of the Internal Revenue Code of 1954 for calendar year 1986, calendar year 1987, calendar year 1988, and calendar year 1989 and the first quarter of calendar year 1990 as is equal to 1 percent of the total compensation on which such taxes are based for each such period. The amounts credited to the account under this subsection shall be credited against, and operate to reduce, the outstanding balance of loans made to the account from the Railroad Retirement Account under subsection (d) of this section prior to October 1, 1985, including interest. The Board shall from time to time request the Secretary of the Treasury to transfer amounts credited to the account pursuant to this subsection from the account to the credit of the Railroad Retirement Account and the Secretary shall make such transfer. If any moneys credited to the account under this subsection remain in the account after the outstanding balance of the loans made to the account prior to October 1, 1985, has been totally repaid with interest, the Board shall request the Secretary of the Treasury to transfer from the account to the Railroad Retirement Account such remaining moneys and the Secretary shall make such transfer.".

(2) CONFORMING AMENDMENT.—Subsection (b) of section 10 of the Railroad Unemployment Insurance Act is amended by striking out "All moneys" and inserting in lieu thereof "Except as provided in subsections (d) and (e), all moneys".

(f) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 3322 (relating to taxable period) is amended—

(A) by adding "and" at the end of paragraph (1), and

(B) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following: "(2) each calendar year after 1986."

(2) Subsection (b) of section 3322 (relating to earlier termination if loans to rail unemployment fund repaid) is amended—

(A) by striking out "The tax imposed by this chapter shall not apply" and inserting in lieu thereof "The basic rate under section 3321(c)(1)(A) of the tax imposed by section 3321 shall not apply", and

(B) by inserting "made before October 1, 1985," after "no balance of transfers" in paragraph (1) thereof.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to remuneration paid after June 30, 1986.

(2) LOAN AUTHORITY EXTENSION.—The amendment made by subsection (d) shall become effective on October 1, 1985.

(3) TIER 2 TAXES DIVERSION.—The amendments made by subsection (e) shall become effective on January 1, 1988.

SEC. 795. TERMINATION OF REPAYABLE ADVANCES TO BLACK LUNG DISABILITY TRUST FUND.

Section 9501(c) (relating to repayable advances to the Black Lung Disability Trust Fund) is amended by adding at the end thereof the following new paragraph:

"(4) TERMINATION.—No advance shall be made to the Black Lung Disability Trust Fund after September 30, 1986.".

SEC. 796. CERTAIN PERMANENT EXEMPTIONS FROM THE FEDERAL UNEMPLOYMENT TAX ACT.

(a) CERTAIN AGRICULTURAL LABOR.—Paragraph (1)(B) of section 3306(c) (defining employment) is amended by striking out "before January 1, 1986,".

(b) FULL-TIME STUDENTS EMPLOYED BY SUMMER CAMPS.—Notwithstanding paragraph (3) of section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982, the amendments made by paragraphs (1) and (2) of such section 276(b) shall also apply to remuneration paid after September 19, 1985.

(c) SERVICES PERFORMED ON CERTAIN FISHING BOATS.—

(1) IN GENERAL.—Section 822(b) of the Economic Recovery Tax Act of 1981 is amended to read as follows:

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to remuneration paid after December 31, 1980.".

(2) TECHNICAL AMENDMENT.—Paragraph (20) of section 3121(b) (defining employment for purposes of Federal Insurance Contributions Act) is amended by inserting "(other than service described in paragraph (3)(A))" after "service".

PART 5—MISCELLANEOUS PROVISIONS

SEC. 797. AUTHORIZATION OF ADDITIONAL FUNDS TO INTERNAL REVENUE SERVICE FOR REVENUE ENFORCEMENT AND RELATED PURPOSES.

There is authorized to be appropriated $46,500,000 for each of the fiscal years 1986, 1987, and 1988 for the use of the Internal Revenue Service to employ 1,550 additional agents and examination employees.

SEC. 798. LIMITATION ON ISSUANCE OF UNITED STATES BONDS.

Subsection (a) of section 3102 of title 31, United States Code, is amended by striking out "$200,000,000,000" and inserting in lieu thereof "$250,000,000,000".

SEC. 799. LIMITATIONS ON AWARDING OF COURT COSTS AND CERTAIN FEES MODIFIED.

(a) MAXIMUM DOLLAR LIMITATION REMOVED.—Subsection (b) of section 7430 (relating to awarding of court costs and certain fees) is amended by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(b) AWARDING OF COURT COSTS AND CERTAIN FEES DENIED IF UNITED STATES PROVES ITS POSITION IS SUBSTANTIALLY JUSTIFIED OR SPECIAL CIRCUMSTANCES EXIST OR IF PREVAILING PARTY PROTRACTS PROCEEDINGS.—

(1) IN GENERAL.—Section 7430(b) (relating to limitations to awarding of court costs and certain fees) is amended by adding at the end thereof the following new paragraphs:

"(4) POSITION OF UNITED STATES SUBSTANTIALLY JUSTIFIED OR SPECIAL CIRCUMSTANCES EXIST.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) if the court determines that—

"(A) the position of the United States was substantially justified, or

"(B) special circumstances exist which would make such a judgment unjust.

"(5) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation costs may be made under subsection (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted such proceeding.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 7430(c)(2) (defining prevailing party) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following new clauses:

"(i) has substantially prevailed with respect to the amount in controversy, or

"(ii) has substantially prevailed with respect to the most significant issue or set of issues presented.".

(c) ADDITIONAL LIMITATIONS ON FEES OF EXPERT WITNESSES AND ATTORNEYS.—Subparagraph (A) of section 7430(c)(1) (defining reasonable litigation costs) is amended to read as follows:

"(A) IN GENERAL.—The term 'reasonable litigation costs' includes—

"(i) reasonable court costs, and

"(ii) based upon prevailing market rates for the kind and quality of services furnished—

"(I) the reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

"(II) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(III) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.".

(d) POSITION OF UNITED STATES INCLUDES ADMINISTRATIVE ACTION.—Section 7430(c) (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(4) POSITION OF UNITED STATES.—The term 'position of the United States' includes—

"(A) the position taken by the United States in the civil proceeding, and

"(B) the administrative action or inaction by the United States upon which such proceeding is based.".

(e) PROVISIONS MADE PERMANENT.—Section 7430 is amended by striking out subsection (f).

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions or proceedings commenced after December 31, 1985.

SEC. 799A. ADDITIONAL CUSTOMS PERSONNEL.

(a) IN GENERAL.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated for the United States Customs Service for fiscal years 1986, 1987, and 1988, there are authorized to be appropriated $27,900,000 for each of such fiscal years to fund the 800 additional full-time equivalent positions required under paragraph (2).

(2) CREATION OF ADDITIONAL POSITIONS.—The Commissioner of Customs shall create 800 full-time equivalent positions in the United States Customs Service which shall be in addition to the number of full-time equivalent positions existing in the United States Customs Service on September 30, 1985. Such additional full-time equivalent positions shall be distributed among customs inspectors, import specialists, customs patrol officers, and special agents and shall be used to enhance the efficiency and availability of the commercial operations of the United States Customs Service at the regional and district level.

(b) ALLOCATION OF RESOURCES.—The Commissioner of Customs shall ensure that sufficient resources are devoted to customs headquarters in newly created customs districts to facilitate the role of such headquarters as headquarters for the region of which such headquarters are a part.

TITLE VIII—COMMITTEE ON GOVERNMENTAL AFFAIRS, POSTAL SERVICE PROGRAMS, CIVIL SERVICE PROGRAMS, AND CIVILIAN AGENCY GOVERNMENT CONTRACTS

PART A—POSTAL SERVICE PROGRAMS

CEILING FOR FISCAL YEAR 1986 APPROPRIATION FOR REVENUE FOREGONE

SEC. 801. Notwithstanding section 2401(c) of title 39, United States Code, the total amount authorized to be appropriated for fiscal year 1986 for revenue foregone for free and reduced-rate mail is $749,000,000.

DEFERRAL OF TRANSITIONAL APPROPRIATION FOR WORKERS' COMPENSATION

SEC. 802. Notwithstanding section 2004 of title 39, United States Code, no funds shall be appropriated for any fiscal year beginning prior to October 1, 1988, to carry out the request by the Postal Service for amounts for fiscal year 1986 for reimbursement to the Department of Labor for workers compensation arising from operations of the former Post Office Department.

DELAY OF STEP 16 RATES TO JANUARY 1, 1986

SEC. 803. (a) The increase in postage rates for nonprofit and certain other mailers announced by the Board of Governors of the Postal Service in Resolution No. 85-7 (adopted September 6, 1985) shall not take effect until January 1, 1986.

(b)(1) Section 3626(a) of title 39, United States Code, is amended to read as follows:

"(a) Each time rates of postage are established under this chapter for a class of mail or kind of mailer under former sections 4358, 4452(b), 4452(c), 4554(b), and 4554(c) of this title, the estimated revenues to be received for such class or kind shall be equal to the direct and indirect postal costs attributable to mail of such class or mailer of such kind, excluding all other costs of the Postal Service.".

(2) The amendment made by this subsection shall take effect January 1, 1986.

APPROPRIATION CEILING AND STUDY CONCERNING THIRD-CLASS COMMERCIAL MATERIAL MAILED AT REDUCED RATES

SEC. 804. (a) Notwithstanding section 2401(c) of title 39, United States Code, the total amount authorized to be appropriated for each of the fiscal years 1987 and 1988 for revenue foregone for reduced rates of postage under former sections 4452(b) and 4452(c) of such title for mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements, shall not exceed 50 percent of the amount which would have been authorized to be appropriated for revenue foregone for reduced rates of postage for such mail under such section 2401(c) if this subsection had not been enacted.

(b)(1) Not less than six months after the date of enactment of this Act, the Postal Rate Commission shall prepare and transmit to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives a report which contains recommendations for legislation to change the eligibility of mail described in subsection (a) for reduced rates of postage under former sections 4452(b) and 4452(c) of title 39, United States Code, in order to reduce the amount of revenue foregone for reduced rates of postage for such mail for each of the fiscal years 1987 and 1988 to an amount which is less than or equal to the amount authorized to be appropriated by subsection (a) for each such fiscal year. The Commission's study shall also include former sections 4355 (a) and (b), former section 4358(d), and former sections 4554 (b) and (c)

(2) In preparing the report required by paragraph (1), the Commission shall invite and consider the views of all interested parties.

RESTRICTIONS ON ELIGIBILITY FOR IN-COUNTY SECOND-CLASS RATES OF POSTAGE

SEC. 805. Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1)(A) In the administration of this section, the rates of postage for mail under subsections (a), (b), and (c) of former section 4358 of this title shall not apply to an issue of a publication if the number of copies of such issue distributed within the county of publication is less than the number equal to the sum of 50 percent of the total paid circulation of such issue plus one.

"(B) Subparagraph (A) of this paragraph shall not apply to an issue of a publication if the total paid circulation of such issue is less than 10,000 copies.

"(2) In the administration of this section, the rates of postage for mail under subsections (a), (b), and (c) of former section 4358 of this title shall apply to not more than 20,000 copies of each issue of a publication mailed at such rates.".

CURBING OF SUBSIDIES FOR ADVERTISING-ORIENTED "PLUS ISSUES" MAILED TO SUBSCRIBERS AT IN-COUNTY RATES

SEC. 806. Section 3626 of title 39, United States Code (as amended by section 805 of this Act) is further amended by adding at the end thereof the following new subsection:

"(g) In the administration of this section, the number of copies of a subscription publication mailed to nonsubscribers during a calendar year at rates of postage under subsections (a), (b), and (c) of former section 4358 of this title may not exceed 10 percent of the number of copies of such publication mailed at such rates to subscribers.".

PART B—CIVIL SERVICE PROGRAMS

PAY ADJUSTMENTS

SEC. 811. (a)(1) The rates of pay under the General Schedule and the rates of pay under the other statutory pay systems referred to in section 5301(c) of title 5, United States Code, shall not be adjusted under section 5305 of such title during fiscal year 1986.

(2) Notwithstanding any other provision of law, the wage schedules and rates of pay for prevailing rate employees described in section 5342(a)(2) of title 5, United States Code (including employees covered under section 9(b) of Public Law 92-392 (86 Stat. 574; 5 U.S.C. 5342 note) and section 704(b) of Public Law 95-454 (92 Stat. 1218; 5 U.S.C. 5343 note)), and for officers and members of crews of vessels shall not be increased under the provisions of subchapter IV of chapter 53 of title 5, United States Code, or any other applicable provision of law as a result of a wage survey or negotiation during fiscal year 1986, except to the extent permitted by section 616(a)(2) of the conference report on H.R. 5798, agreed to by the House of Representatives on September 12, 1984, as contained in House Report 98-993 (referred to in Public Law 98-473, 98 Stat. 1963).

(b)(1) For fiscal years 1987 and 1988, the President shall provide for the adjustment of rates of pay under section 5305 of title 5, United States Code, as appropriate to reduce outlays, relating to pay of officers and employees of the Federal Government, by at least $746,000,000 in fiscal year 1987 and $1,264,000,000 in fiscal year 1988 (without regard to reductions in outlays which result by reason of subsections (a), (c), and (d) of this section and the application of section 1009 of title 37, United States Code), computed using the baseline used for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, 99th Congress, 1st Session), agreed to on August 1, 1985.

(2) Paragraph (1) shall not be construed to suspend the requirements of section 5305 of title 5, United States Code, with respect to fiscal years 1987 and 1988.

(c) Notwithstanding any other provision of law, any adjustment in a wage schedule or rate of pay that—

(1) applies to—

(A) a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, including employees covered under section 9(b) of Public Law 92-392 (86 Stat. 574; 5 U.S.C. 5342 note) and section 704(b) of Public Law 95-454 (92 Stat. 1218; 5 U.S.C. 5343 note), or

(B) to an employee covered by section 5348 of such title,

(2) results from a wage survey or negotiation, and

(3) would take effect, but for this subsection, on or after October 1, 1986,

shall not take effect until the first day of the first applicable pay period beginning not less than 90 days after the day on which such adjustment would, but for this subsection, otherwise have taken effect. The Office of Personnel Management shall take such actions as may be necessary to carry out this subsection.

(d)(1) Section 5305 of title 5, United States Code, is amended—

(A) in subsection (a)(2), by striking out "October 1 of the applicable year" and inserting in lieu thereof "January 1 of the next year after the date the report is submitted to the President";

(B) in subsection (c)(2), by striking out "October 1 of the applicable year" and inserting in lieu thereof "January 1 of the next year after the year in which the alternative plan is transmitted to the Congress; and

(C) in subsection (m), by striking out "October 1" and inserting in lieu thereof "the applicable January 1".

(e)(1)(A) Subchapter IV of chapter 53 of title 5, United States Code, is amended—

(i) in section 5342(b)(3) by striking out "section 5348" and inserting in lieu thereof "sections 5345 and 5348";

(ii) by inserting after section 5344 the following new section 5345:

"§ 5345. Effect of an alternative plan under the pay comparability system

"Notwithstanding any other provision of this title or of any other law, if, in any fiscal year, an adjustment in rates of pay under section 5305 of this title is limited or delayed by reason of an alternative plan under subsection (c) of such section, the Office of Personnel Management shall take such action as may be necessary to extend the application of the limitation or delay to any adjustment of wage schedules, rates, or pay that would otherwise take effect in such fiscal year as prescribed in or pursuant to—

"(1) section 5343, 5344, or 5348 of this title; or

"(2) section 9(b) of Public Law 92-392 (86 Stat. 574; 5 U.S.C. 5343 note) and section 704(b) of Public Law 95-454 (92 Stat. 1218; 5 U.S.C. 5343 note).

The Office may provide for such exceptions as the Office may determine to be necessary and in the public interest.";

(iii) in section 5348(a) by inserting "section 5345 of this title and" after "provided by"; and

(iv) in the first sentence of section 5349(a) by inserting "section 5345, relating to applicability of an alternative plan," after "retroactive pay,".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5344 the following new item:

"5345. Effect of an alternative plan under the pay comparability system.".

(2) Section 704(b)(B) of Public Law 95-454 (92 Stat. 1218; 5 U.S.C. 5343 note) is amended by inserting "(except section 5345)" after "chapter 53".

(3) Section 5345(2) of title 5, United States Code (as added by paragraph (1)(A)(ii)) and the amendment made by paragraph (2) shall not apply to any increase in wage schedules or rates required by a contract entered into before October 1, 1984.

COMPUTATION OF HOURLY RATES OF PAY

SEC. 812. (a) Section 5504(b) of title 5, United States Code, is amended—

(1) by striking out the first sentence;

(2) in the second sentence, by striking out "When" and inserting in lieu thereof "When, in the case of an employee,";

(3) in paragraph (1), by striking out "2,080" and inserting in lieu thereof "2,087"; and

(4) in the last sentence, by striking out "title." and inserting in lieu thereof "title other than an employee or individual excluded by section 5541(2)(xvi) of this title.".

(b) The amendments made by subsection (a) shall take effect as of the beginning of the first applicable pay period commencing on or after October 1, 1985.

HEALTH CARE FURNISHED UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM IN MEDICALLY UNDERSERVED AREAS

SEC. 813. (a)(1) Section 3 of the Act entitled "An Act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes", approved September 17, 1978 (Public Law 95-368; 92 Stat. 606; 5 U.S.C. 8902 note), is amended by striking out "; except that such provisions shall not apply to services provided after December 31, 1984".

(2) Section 5(b) of the Act entitled "An Act to amend the provisions of chapters 83 and 89 of title 5, United States Code, which relate to survivor benefits for certain dependent children, and for other purposes", approved January 2, 1980 (Public Law 96-179; 93 Stat. 1300; 5 U.S.C 8902 note), is amended by striking out "and before January 1, 1985,".

(b) The amendments made by subsection (a) shall take effect with respect to services provided after December 31, 1984.

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM RESERVES

SEC. 814. (a) The purposes of this section are—

(1) to ensure that the Federal Government's share of the reserves which are refunded under subsection (b) to the Employees Health Benefits Fund from the special reserve funds maintained by carriers under the Federal Employees Health Benefits program for the purposes of such program is held in the Employees Health Benefits Fund and is used to fund increases in the amounts of the Government's contributions for payment of the subscription charges of health benefits plans under such program; and

(2) to ensure that financial reserves maintained for the purposes of the Federal Employees Health Benefits program will be held in the Employees Health Benefits Fund to the maximum extent that is consistent with the stable and efficient operation of such program.

(b) Notwithstanding the provisions of any contract entered into by the Office of Personnel Management under section 8902 of title 5, United States Code, the Office shall require the carriers of health benefits plans under chapter 89 of such title to refund to the Employees Health Benefits Fund (referred to in section 8909(a) of such title) from reserves held by the carriers for the purposes of such plans the total amount of—

(1) not less than $800,000,000 in fiscal year 1986; and

(2) not less than $300,000,000 in fiscal year 1987.

(c) Each carrier of a health benefits plan referred to in subsection (b) shall refund, under this section, such share of the total amounts prescribed in such subsection as the Office of Personnel Management in its sole discretion determines appropriate.

(d) The Government's share of the amounts refunded under subsection (b) shall be held in the Employees Health Benefits Fund and shall be available and used to fund increases in the amounts of the Government's contributions for payment of the subscription charges of health benefits plans under such program.

COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT

SEC. 815. (a)(1) Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(o)(1) Notwithstanding section 8331(4) of this title, or any other subsection of this section, except as provided in paragraph (3) of this subsection, the amount of the annuity of an employee whose service includes service that was performed on less than a full-time basis shall be computed under this section as provided in paragraph (2) of this subsection.

"(2) In computing an annuity in the case of an employee referred to in paragraph (1) of this subsection—

"(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on less than a full-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

"(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on less than a full-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

"(3) This subsection shall not apply to computations made under subsection (f) or (g) of this section.".

(2) Section 8341 of such title is amended—

(A) by striking out "and (n)" in subsection (b)(1) and inserting in lieu thereof ", (n), and (o)"; and

(B) by striking out "and (n)" in subsection (d) and inserting in lieu thereof "(n), and (o)".

(b) Section 4109(b) of title 38, United States Code, is repealed.

(c) The amendments made by this section shall take effect with respect to service performed on or after the date of enactment of this Act.

EFFECTS OF WAGE AREA SURVEY REGARDING CERTAIN FEDERAL EMPLOYEES IN TUCSON, ARIZONA

SEC. 816. Notwithstanding any other provision of law limiting the amounts payable to prevailing wage rate employees during the fiscal year 1986, wage schedules or rates payable in the Tucson, Arizona wage area shall not be reduced as a result of a wage survey conducted during fiscal year 1985.

PART C—CIVILIAN AGENCY GOVERNMENT CONTRACTS

CIVILIAN AGENCY MULTIYEAR CONTRACTING AUTHORITY

SEC. 821. (a)(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 305 (41 U.S.C. 255) the following new section:

"MULTIYEAR CONTRACTS

"SEC. 306. (a) For the purposes of this section, the term 'multiyear contract', means a contract in effect for a period not exceeding five years.

"(b) Subject to subsection (e), an agency head may enter into a multiyear contract for the acquisition of property or services when—

"(1)(A) appropriations are available and adequate for the payment for such acquisition for the first fiscal year during which the contract is in effect; and

"(B) there is a reasonable expectation that, during the period the contract is in effect, such agency head will request funding for the contract at the level necessary to avoid cancellation of the performance under the contract; and

"(2) such agency head determines that—

"(A) such a contract will serve the best interests of the Government by—

"(i) reducing costs under the contract;

"(ii) achieving economies in administration, performance, and operation;

"(iii) increasing quality of performance by or service from the contractor; or

"(iv) encouraging full and open competition;

"(B) during the proposed contract period—

"(i) there will be a continuing or recurring need for the property or services; and

"(ii) the minimum need for the property or services to be acquired is expected to remain substantially unchanged in terms of rate of production or performance, rate of acquisition, and total quantities or extent of services;

"(C) the specifications for the property or services are expected to be reasonably stable, and the technical risks associated with the acquisition are not excessive; and

"(D) such a contract will not inhibit small business concerns from submitting a bid or proposal for such contract.

"(c) A multiyear contract authorized by this section may include—

"(1) a provision that the performance under the contract during the second or any subsequent fiscal year included in the contract period is contingent on the appropriation of funds for such year; and

"(2) a provision for the payment of a reasonable cancellation charge to the contractor if the performance is canceled pursuant to a provision described in clause (1).

"(d)(1) If appropriated funds are not available for expenditure on a multiyear contract during the second or subsequent fiscal year included in the contract period, the performance under the contract shall be canceled.

"(2) Any cost of the cancellation of performance under the contract may be paid from appropriated funds which—

"(A) were originally available for performance of the contract;

"(B) are then currently available for the acquisition of similar property or services and are not otherwise obligated; or

"(C) are made available for the payment of such costs.

"(e)(1) Nothing in this section is intended to modify or affect any other provision of law which authorizes multiyear contracting.

"(2) This section does not authorize an agency head to acquire property or services by means of a multiyear contract unless the agency head is otherwise authorized by law to acquire such property or services.".

(2) The table of contents at the beginning of such Act is amended by striking out the item relating to section 306 and inserting in lieu thereof the following:

"306. Multiyear contracts.".

(b) The amendments made by subsection (a) shall take effect with respect to contracts entered into on or after the date of enactment of this Act.

PART D—FEDERAL MOTOR VEHICLE EXPENDITURE CONTROL

MONITORING SYSTEM

SEC. 831. The head of each executive agency, including the Department of Defense, shall designate one office, officer, or employee of the agency to establish and operate a central monitoring system for, and provide oversight of, the motor vehicle operations of the agency, related activities, and related reporting requirements.

DATA COLLECTION

SEC. 832. (a) The head of each executive agency, including the Department of Defense, shall develop a system to identify, collect, and analyze data with respect to all costs incurred by the agency in the operation, maintenance, acquisition, and disposition of motor vehicles, including Government-owned vehicles, leased vehicles, and privately owned vehicles used for official purposes.

(b) The Administrator, in cooperation with the Comptroller General and the Director, shall promulgate standards governing the establishment and operation by executive agencies of the systems required by the subsection (a), including standards with respect to data concerning the costs and uses of motor vehicles and with respect to the uniform collection and submission of such data. Each executive agency, including the Department of Defense, shall comply with such standards.

AGENCY STATEMENTS WITH RESPECT TO MOTOR VEHICLE USE

SEC. 833. (a) The head of each executive agency, including the Department of Defense, shall include with the appropriation request of such agency submitted under section 1108 of title 31, United States Code, for fiscal year 1987 and each succeeding fiscal year, a statement—

(1) specifying—

(A) the total motor vehicle acquisition, maintenance, leasing, operation, and disposal costs incurred by such agency in the most recently completed fiscal year; and

(B) an estimate of such costs for the fiscal year in which such request is submitted and for the succeeding fiscal year; and

(2) justifying why the existing and any new motor vehicle acquisition, maintenance, leasing, operation, or disposal requirements of the agency cannot be met through the Interagency Fleet Management System operated by the Administrator or through a qualified private fleet management firm or another private contractor.

(b) The head of each executive agency shall comply with the standards promulgated under section 832(b) in preparing each statement required under subseciton (a).

PRESIDENTIAL REPORT

SEC. 834. The President shall include with the budget transmitted pursuant to section 1105 of title 31, United States Code, for fiscal year 1987 and each succeeding fiscal year, or in a separate written report to the Congress for each such fiscal year, a summary and analysis of the statements most recently submitted by the heads of executive agencies pursuant to section 833(a). Each such summary and analysis shall include a review of the potential cost savings that could be achieved in the acquisition, maintenance, leasing, operation, and disposal of motor vehicles by executive agencies through—

(1) the use of a qualified private fleet management firm or another private contractor;

(2) increased reliance by executive agencies on the Interagency Fleet Management System operated by the Administrator; or

(3) other existing motor vehicle management systems.

STUDY REQUIRED

SEC. 835. (a) The head of each executive agency, including the Department of Defense, shall conduct a comprehensive and detailed study of the costs, benefits, and feasibility of entering into a contract with a qualified fleet management firm or another

private contractor to meet its motor vehicle operation, maintenance, leasing, acquisition, and disposal requirements. Such study shall compare the costs, benefits, and feasibility of such a contract to the costs and benefits of the agency's current motor vehicle operations and to the costs, benefits, and feasibility of the use of the Interagency Fleet Management System operated by the Administrator.

(b) Within 6 months after the date of enactment of this Act, the head of each executive agency shall submit a report concerning the study required under subsection (a) to the Director and the Comptroller General.

(c) Within one year after the date of enactment of this Act, the Comptroller General shall submit an analysis of the reports received under subsection (b) to the Congress.

INTERAGENCY CONSOLIDATION

SEC. 836. The Administrator shall review and identify interagency opportunities for the consolidation of motor vehicles, related equipment, and facilities, and of functions relating to the administration and management of such vehicles, equipment, and facilities, in order to reduce the size and cost of the Federal Government's motor vehicle fleet. Within one year after the date of enactment of this Act, the Administrator shall submit a report to the Congress specifying the findings of the Administrator from the review conducted under the preceding sentence.

CONSOLIDATION OF FACILITIES

SEC. 837. The Administrator shall require the head of each executive agency, including the Department of Defense, to—

(1) review the motor pool, storage, maintenance, and other motor vehicle facilities within the agency;

(2) consolidate such facilities where feasible and cost effective; and

(3) submit to the Director a report identifying possible impediments to any such consolidation, including current accounting methods, budget processes, or organizational structures.

REDUCTION OF STORAGE AND DISPOSAL COSTS

SEC. 838. The Administrator shall take such actions as may be necessary to reduce motor vehicle storage and disposal costs, including actions to increase the frequency of motor vehicle sales by public auction, to reduce presale storage costs, and to improve the rate of return on motor vehicle sales through a program of vehicle reconditioning prior to sale.

SAVINGS

SEC. 839. (a) The President shall take such action as may be necessary to ensure that expenditures for the operation, maintenance, leasing, acquisition, and disposal of motor vehicles by executive agencies, including the Department of Defense, are reduced by fiscal year 1988, to an amount which is $225,000,000 less than the amount requested for such operation, maintenance, leasing, acquisition, and disposal requested by the President in the budget submitted under section 1105 of title 31, United States Code, for fiscal year 1986.

(b) The Director shall monitor compliance by executive agencies with directives of the President to carry out subsection (a) and shall report, within 6 months after the date of enactment of this Act and every 6 months thereafter, to the Committees on Appropriations of the House and Senate, the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House, with respect to the reductions in expenditures by executive agencies, including the Department of Defense, required under subsection (a).

COMPLIANCE

SEC. 840. (a) The Administrator shall comply with and be subject to the provisions of this part with regard to all motor vehicles that are used within the General Services Administration for official purposes.

(b) The provisions of this part with respect to motor vehicles from the Interagency Fleet Management System shall be complied with by the executive agencies to which such motor vehicles are assigned.

APPLICABILITY

SEC. 841. (a) The President shall apply the reductions in expenditures required by section 839(a) primarily to administrative motor vehicle fleets used at the headquarters and regional headquarters of executive agencies, rather than to motor vehicles used by line agency personnel working in agency field operations or activities.

(b) The President shall require the Administrator, in cooperation with the Director, to promulgate appropriate regulations, standards, and definitions that shall assure that executive agencies comply with and implement the reductions in expenditures required by section 839(a) in the manner prescribed by subsection (a).

COOPERATION

SEC. 842. The Director and the Administrator shall closely cooperate in the implementation of the provisions of this part, and shall report regularly to the Congress on the progress made in carrying out this part.

REPORTS

SEC. 843. Not later than 12 months after the date of enactment of this Act, the Comptroller General shall prepare and transmit a report to the Congress on the activities of the Director, the Administrator, and executive agencies in carrying out this part. After transmitting the report required by the preceding sentence, the Comptroller General shall submit periodic reports to the Congress on such activities.

DEFINITIONS

SEC. 844. For purposes of this part—

(1) the term "executive agency" means—

(A) an executive agency (as such term is defined in section 105 of title 5, United States Code), which operates at least three hundred motor vehicles; and

(B) the Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority;

(2) the term "Director" means the Director of the Office of Management and Budget;

(3) the term "Administrator" means the Administrator of General Services;

(4) the term "Comptroller General" means the Comptroller General of the United States; and

(5) the term "motor vehicle" means any vehicle self-propelled or drawn by mechanical power, except that such term does not include any vehicle designed or primarily used for military field training, combat, or tactical purposes.

TITLE IX—COMMITTEE ON LABOR AND HUMAN RESOURCES EDUCATION PROGRAMS

SHORT TITLE; TABLE OF PARTS

SEC. 901. (a) This title may be cited as the "Labor and Human Resources Budget Reconciliation Act".

TABLE OF PARTS

Part A—Student loan program savings amendments.
Part B—Savings on improved student loan collection.
Part C—Savings attributable to loan consolidation.
Part D—Savings attributable to operation of guaranty agencies.
Part E—Savings attributable to the operation of the student loan marketing association.
Part F—Flextime provisions.
Part G—Health and hospitals.
Part H—Graduate medical education.
Part I—Single employer pension plans.

(b) Parts A through E of this title may be cited as the "Student Loan Amendments Act of 1985".

PART A—STUDENT LOAN PROGRAM SAVINGS AMENDMENTS

MULTIPLE DISBURSEMENT OF GUARANTEED STUDENT LOANS

SEC. 911. (a) FEDERALLY INSURED STUDENT LOAN PROGRAM.—Section 427(a) of the Higher Education Act of 1965 (hereafter in this Act referred to as the "Act") is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(3) in the case of a loan made for any period of enrollment of more than one semester, two quarters, or 600 clock hours, the proceeds of the loan will be disbursed in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second installment being not less than one-third of the period of enrollment for which the student received the loan.".

(b) MULTIPLE DISBURSEMENT REQUIRED IN GUARANTEED STUDENT LOAN PROGRAM.—Section 428(b)(1) of the Act is amended—

(1) by striking out "and" at the end of clause (O);

(2) by redesignating clause (P) as clause (Q); and

(3) by inserting after clause (O) the following new clause:

"(P) provides that the proceeds of any loan for any period of enrollment of more than one semester, two quarters, or 600 clock hours will be disbursed in two or more installments, with the interval between the first and second installment being not less than one-third of the period of enrollment for which the student received the loan, and provides that, for purposes of this clause, all loans made within any period of 90 days shall be considered as a single loan; and".

(c) REPEAL OF EXISTING INCENTIVES TO MAKE MULTIPLE DISBURSEMENTS.—Section 428(a) of the Act is amended by striking out paragraph (8).

(d) PAYMENT OF ORIGINATION FEE.—Section 438(c) of the Act is amended—

(1) by redesignating paragraph (4) ds paragraph (5); and

(2) by adding after paragraph (3) the following new paragraph:

"(4) For the purpose of section 428(b)(1)(P), the origination fee shall be charged against the first installment of the loan.".

(e) ADDITIONAL CONFORMING CHANGES.—(1) Section 425(a)(1) of the Act is amended—

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

(B) by striking out clause (B) and by redesignating clause (C) as clause (B); and

(C) by striking out the last sentence.

(2) Section 428(b)(1)(A) of the Act is amended—

(A) by inserting "and" at the end of division (i);

(B) by striking out division (ii) and by redesignating division (iii) as division (ii); and

(C) in the matter following such division, by striking out "annual limit," and all that

follows through "division (ii)" and inserting in lieu thereof "annual limit".

SPECIAL ALLOWANCE

SEC. 912. Section 438(b)(2)(A) of the Act is amended by striking out "3.5 per centum" and inserting in lieu thereof "3.25 per centum".

PROMPT PAYMENT OF SUPPLEMENTAL GUARANTY ADMINISTRATIVE COST AGREEMENT

SEC. 913. (a) PURPOSE.—It is the purpose of the amendments made by this section to assure the prompt payment of the amount due under the supplemental guaranty administrative cost agreement made under section 428(f)(2) in order to encourage improved collection of student loans and preclaims assistance to prevent default on student loans.

(b) PROMPT PAYMENT REQUIRED.—(1) Section 428(f)(1) of the Act is amended—

(A) by striking out "is authorized to" and inserting in lieu thereof "shall";

(B) by striking out "shall not exceed" and inserting in lieu thereof "shall be equal to"; and

(C) by striking out the third and fourth sentences of such section.

(2) Section 428(f)(2) of the Act is amended—

(A) by striking out "is authorized to" and inserting in lieu thereof "shall";

(B) by striking out "shall not exceed" and inserting in lieu thereof "shall be equal to"; and

(C) by striking out the third and fourth sentences of such section.

EFFECTIVE DATE

SEC. 914. (a) GENERAL RULE.—The amendments made by sections 911 and 912 of this Act shall take effect—

(1) with respect to loans made on or after October 1, 1985, or

(2) with respect to any loan for which the completed note or other written evidence of the loan was sent or delivered to the borrower on or after 10 days after the date of enactment of this Act,

whichever occurs later.

(b) SPECIAL RULE.—The amendments made by section 913(b) shall take effect with respect to fiscal years beginning after September 30, 1984.

PART B—SAVINGS ON IMPROVED STUDENT LOAN COLLECTION

SUBPART 1—GUARANTEED AND FEDERALLY INSURED STUDENT LOANS

TERMS OF FEDERALLY INSURED LOANS

SEC. 921. Section 427(a)(2) of the Act is amended—

(1) by striking out clause (ii) of subparagraph (B) and by redesignating clauses (iii) and (iv) of subparagraph (B) as clauses (ii) and (iii), respectively;

(2) by striking out "or the fifteen-year period" in the matter following clause (viii) of subparagraph (C); and

(3) by amending subparagraph (I) to read as follows:

"(I) shall be treated by the lender as follows: (i) the funds borrowed (except by a borrower under section 428B) shall be disbursed by check, sent to the eligible institution the student attends or plans to attend, and made payable to the order of the student and such institution as copayees, with the endorsement of both parties required, or (ii) in the case of funds borrowed by a borrower under section 428B, such funds shall be disbursed by check, sent to the borrower, and made payable to the order of the borrower, with the endorsement of the borrower required, and a notice of such disbursement shall be sent by the lender or the Secretary to such eligible institution, and".

TERMS OF GUARANTEED LOANS

SEC. 922. Section 428(b)(1) of the Act is amended—

(1) by striking out subclause (ii) of clause (D);

(2) by inserting "and" at the end of subclause (i);

(3) by redesignating subclause (iii) of clause (D) as subclause (ii); and

(4) by amending clause (O) to read as follows:

"(O)(i) provides that funds borrowed (except by a borrower under section 428B) shall be disbursed by check, sent to the eligible institution the student attends or plans to attend, and made payable to the order of the student and such institution as copayees, with the endorsement of both parties required, or (ii) in the case of funds borrowed by a borrower under section 428B, such funds shall be disbursed by check, sent to the borrower and made payable to the order of the borrower, with the endorsement of such borrower required, and a notice of such disbursement shall be sent by the lender or the guaranty agency to such institution;".

AGREEMENT FOR AUDITS

SEC. 923. Section 428(b)(2)(C) of the Act is amended—

(1) by inserting "(i)" immediately after "provide for"; and

(2) by inserting before the period at the end thereof a semicolon and the following: "(ii)(I) except as provided in subdivision (II), conducting financial and compliance audits of the guaranty agency at least once every two years and covering the period since the most recent audit, conducted by a qualified independent auditor in accordance with the standards established by the Comptroller General for the audit of governmental organizations, programs, activities, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted in an audit report to the Secretary, or (II) with regard to a guaranty program of a State agency which is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of subdivision (I) for the period of time covered by such audit; and (iii) recovery by the Secretary, by recoupment or other means, under procedures established by the Secretary, from the guaranty agency of amounts, plus interest as set by the Secretary, determined by such audits to be owing".

COLLECTION PROCEDURES

SEC. 924. Section 428(d) of the Act is amended—

(1) by redesignating clauses (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by inserting "(1)" before "No provision of any law"; and

(4) by adding at the end thereof the following new paragraphs:

"(2) Notwithstanding any provision of State law that would set an earlier deadline for filing suit—

"(A) a guaranty agency which has an agreement with the Secretary under subsection (c) may file suit for collection of the amount due from a borrower on a loan made under this part during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower; and

"(B) subject to the provisions of section 2416 of title 28 of the United States Code, the Attorney General may file suit for collection of the amount due the Secretary from a borrower pursuant to subsection (c)(2)(D) of this section until six years following the date on which the loan is assigned to the Secretary under this part.

"(3) Notwithstanding any provision of State law to the contrary, in collecting any obligation arising from a loan made under this part, a guaranty agency which has an agreement with the Secretary under subsection (c) shall not be subject to a defense raised by any borrower based on (A) a claim of infancy, or (B) the action or omission of an eligible institution or lender, if such agency did not have actual notice of such defense when such agency reimbursed the previous holder of the loan for its loss.".

RECOVERY COSTS

SEC. 925. Section 430(b) of the Act is amended—

(1) by striking out in paragraph (1) "(including reasonable administrative costs)" and inserting in lieu thereof the following: "(including reasonable administrative and collection costs, to the extent set forth in regulations issued by the Secretary)";

(2) by striking out paragraph (2); and

(3) by striking out "(1)".

CREDIT BUREAU REPORTS

SEC. 926. Part B of title IV of the Act is amended by adding immediately after section 430 the following new section:

"REPORTS TO CREDIT BUREAUS AND INSTITUTIONS OF HIGHER EDUCATION

"SEC. 430A. (a) For the purpose of promoting responsible repayment of loans covered by a guaranty agreement pursuant to section 428, each guaranty agency having such an agreement with the Secretary, eligible lender, or subsequent holder shall enter into agreements with credit bureau organizations to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such organizations in complying with the Fair Credit Reporting Act, such agreements may provide for timely response by a guaranty agency, eligible lender, or subsequent holder concerning loans covered by a guaranty agreement, to requests from such organizations for responses to objections raised from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subsection (c), such agreements shall require the guaranty agency, eligible lender, or subsequent holder to disclose to such organizations with respect to any loan dispersed to a student—

"(1) the date of disbursement and the amount of the loan;

"(2) the date of default and information concerning collection of the loan, including information concerning the repayment status of any defaulted loan on which the guaranty agency has made a payment to the previous holder of the loan; and

"(3) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 437.

"(b) Such agreements may also provide for the disclosure by such organizations to the guaranty agency, eligible lender, or subsequent holder upon receipt of a notice under subsection (a)(2) that such a loan is in default, or information which may assist the guaranty agency, eligible lender, or subsequent holder in collecting the loan.

"(c) Agreements entered into pursuant to this section shall contain such provisions as may be necessary to ensure that—

"(1) no information is disclosed by the guaranty agency, eligible lender, or subsequent holder unless its accuracy and completeness have been verified and the guaranty agency, eligible lender, or subsequent

holder has determined that disclosure would carry out the purpose of this section;

"(2) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the guaranty agency, eligible lender, or subsequent holder with respect to such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);

"(3) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning such information; and

"(4) with regard to notices of default under subsection (a)(2) of this section, except for disclosures made to obtain the borrower's location, the guaranty agency, eligible lender, or subsequent holder (A) shall not disclose any such information until the guaranty agency, eligible lender, or subsequent holder has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of the loan, but (B) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(d) A guaranty agency, eligible lender, subsequent holder, or credit bureau organization which discloses or receives information under this section shall not be considered a Government contractor within the meaning of section 552a of title 5 of the United States Code (the Privacy Act of 1974).

"(e) Each guaranty agency, eligible lender, and subsequent holder is authorized to disclose information described in subsections (a) and (b) concerning student borrowers to the eligible institutions such borrowers attend or previously attended.

"(f) Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from a guaranty agency, eligible lender, or subsequent holder regarding the status of a borrower's account on a loan guaranteed under this part until the later of—

"(1) seven years from the date on which the agency paid a claim to the holder on the guaranty, or

"(2) seven years from the date the guaranty agency, eligible lender, or subsequent holder first reported the account to a consumer reporting agency.".

COLLECTION PROCEDURES AGAINST UNITED STATES

SEC. 927. Section 432(a)(2) of the Act is amended by adding at the end thereof a comma and the following: "and notwithstanding any provision of State law to the contrary, in collecting any obligation arising from a loan made under this part, the United States shall not be subject to a defense raised by any borrower on (A) a claim of infancy, or (B) the action or omission of an eligible institution or lender, if the Secretary and his agents did not have actual notice of such defense when the Secretary reimbursed the previous holder of the loan for its loss;".

CIVIL PENALTIES

SEC. 928. Section 432 of the Act is amended by adding at the end thereof the following new subsections:

"(f)(1) Whenever the Secretary determines, after reasonable notice and opportunity for a hearing on the record, that a lender or a guaranty agency—

"(A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or

"(B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed $5,000 for each violation, failure, or substantial misrepresentation.

"(2) No civil penalty may be imposed under this subsection unless it is determined that—

"(A) the violation, failure, or substantial misrepresentation referred to in that subsection resulted from—

"(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted to avoid the violation, failure, or substantial misrepresentation;

"(ii) gross negligence; or

"(iii) willful actions on the part of the lender or guaranty agency; and

"(B) the violation, failure, or substantial misrepresentation is material.

"(3) A lender or guaranty agency is not liable under this subsection if, prior to the institution of an action under that subsection, the lender or guaranty agency cures or corrects the violation or failure or notifies the person to which the substantial misrepresentation was made of the actual nature of the financial charges involved.

"(4) For the purposes of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both, and the Secretary may only impose a single civil penalty for each such violation, failure, and substantial misrepresentation.

"(5) If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under this subsection, but the assignee shall not be liable for any such civil money penalty.

"(6) Until a matter is referred to the Attorney General, any civil penalty under this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination, the gravity of the violation, failure, or substantial misrepresentation, the frequency and persistence of the violation, failure or substantial misrepresentation, and the amount of any losses resulting from the violation, failure or substantial misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged (unless the lender or agency has in the case of a final agency determination commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding).".

SUBPART 2—NATIONAL DIRECT STUDENT LOANS

TERMS OF AGREEMENT

SEC. 931. (a) STRENGTHENING ASSIGNMENT PROVISION.—Section 463(a)(5) of the Act is amended by striking out "for at least 2 years".

(b) MAINTENANCE OF COLLECTION RECORDS.—Section 463(a) of the Act is amended by redesignating clause (9) as clause (10) and by adding after clause (8) the following new clause:

"(9) provide assurances that the institution will maintain acceptable collection records, in accordance with criteria established by the Secretary, with respect to loans made under this part; and".

REPORTING BY CONSUMER REPORTING AGENCY

SEC. 932. Section 463(c) of the Act is amended by adding the following new paragraph:

"(3) Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from the Secretary regarding the status of a borrower's account on a loan made under this part until the later of—

"(A) seven years from the date on which the Secretary accepted an assignment or referral of a loan, or

"(B) seven years from the date the Secretary first reported the account to a consumer reporting agency, if that account had not been previously reported by any other holder of the note.".

DEFAULT PENALTY

SEC. 933. Section 463A(a)(7) of the Act is amended by inserting immediately before the semicolon at the end thereof the following: "and a description of any penalty imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on a loan".

COLLECTION TERMS

SEC. 934. Section 464(c) of the Act is amended—

(1) by amending clause (H) of paragraph (1) to read as follows:

"(H) pursuant to regulations of the Secretary, (i) shall provide for an assessment of a charge with respect to the loan for failure of the borrower to pay all or part of an installment when due, and (ii) may provide for an assessment of a charge with respect to the loan for the failure of the borrower to file timely and satisfactory evidence of an entitlement of the borrower to deferment or cancellation benefits under this part; and"; and

(2) by amending paragraph (4) to read as follows:

"(4) The amount of any charge under clause (H)(i) of paragraph (1) shall include the expenses reasonably incurred in attempting such collection with respect to such loan, to the extent imposed by the Secretary.".

REFERRAL FOR COLLECTION

SEC. 935. Section 467(a) of the Act is amended—

(1) by inserting immediately after "attempt to collect" a comma and the following: "by any means authorized by law, including referral to the Attorney General for litigation, for collecting claims of the United States,"; and

(2) by striking out the comma after "any loan".

FEDERAL COLLECTION PROCEDURE

SEC. 936. Section 467(b) of the Act is amended to read as follows:

"(b) The Secretary shall continue to attempt to collect any loan assigned under sec-

tion 465(a)(5) until all appropriate collection efforts, as determined by the Secretary, have been expended.".

STATUTE OF LIMITATIONS

SEC. 937. Part E of title IV of the Act is amended by adding immediately after section 467 the following new section:

"STATUTE OF LIMITATIONS

"SEC. 467A. Notwithstanding any provision of State law that would set an earlier deadline for filing suit—

"(1) an institution which has an agreement with the Secretary pursuant to section 463(a) may file suit for collection of the amount due from a borrower on a loan made under this part during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date of the default of the borrower with respect to that amount; and

"(2) subject to the provisions of section 2416 of title 28 of the United States Code, the Attorney General may file suit for collection of the amount due from a borrower on a loan made under this part until six years following the date on which the loan is assigned or referred to the Secretary under this part.".

SUBPART 3—GENERAL PROVISIONS

STUDENT ELIGIBILITY

SEC. 941. Section 484(a) of the Act is amended—

(1) by striking out the word "such" each place it appears in paragraph (4) and inserting in lieu thereof "any"; and

(2) by striking out "(which need not be notarized)" in paragraph (5) and inserting in lieu thereof "(which need not be notarized but which shall include such student's social security number)".

STATUTE OF LIMITATIONS

SEC. 942. Part F of title IV of the Act is amended by adding immediately after section 484 the following new section:

"STATUTE OF LIMITATIONS

"SEC. 484A. (a) Notwithstanding any provision of State law that would set an earlier deadline for filing suit—

"(1) an institution which receives funds under this title may file suit for collection of a refund due from a student on a grant made or work assistance awarded under this title during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date the refund first became due; and

"(2) subject to the provisions of section 2416 of title 28 of the United States Code, the Attorney General may file suit for payment of a refund due from a student on a grant made under this title until six years following the date on which the refund first became due.

"(b) Notwithstanding any provision of State law to the contrary, a borrower who has defaulted on a loan made under this title shall be required to pay, in addition to other charges specified in this title, reasonable collection costs.".

PROGRAM PARTICIPATION AGREEMENTS

SEC. 943. (a) Section 487(a)(1) of the Act is amended to read as follows:

"(1) The institution will use funds received by it for any program under this title and any interest earned thereon solely for the purposes specified in, and in accordance with the provision of, that program.".

(b) Section 487(b)(1)(A) of the Act is amended to read as follows:

"(A)(i)(I) except as provided in subdivision (II), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this title or obtained from a student or parent who has a loan insured or guaranteed under this title, at least once every two years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with the standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted in an audit report to the Secretary, or (II) with regard to an eligible public institution which is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of subdivision (I) for the period of time covered by such audit; and (ii) recovery by the Secretary, by recoupment or other means, under procedures established by the Secretary, from the eligible institution of amounts, plus interest as set by the Secretary, determined by such audits to be owing;".

EFFECTIVE DATES

SEC. 944. (a) PROSPECTIVE PROVISIONS; LOANS.—The amendments made by sections 921, 922, 933, and 934 shall apply to loans to cover the cost of attendance for any period of enrollment beginning on or after October 1, 1985.

(b) RETROACTIVE PROVISIONS; LOANS.—The amendments made by sections 923, 924, 925, 926, 927, 928, 931, 932, 935, 936, and 937 shall apply to all loans, including loans made before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

(c) PROSPECTIVE PROVISION; ALL ASSISTANCE.—The amendment made by section 941 shall apply to grants, loans, or work assistance to cover the cost of attendance for any period of enrollment beginning on or after October 1, 1985.

(d) RETROACTIVE PROVISION; GRANTS.—The amendment made by section 942 shall apply to all grants, including grants awarded before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

(e) RETROACTIVE PROVISIONS; ALL ASSISTANCE.—The amendment made by section 943 shall apply to all grants, loans, or work assistance, including such assistance awarded before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

PART C—SAVINGS ATTRIBUTABLE TO LOAN CONSOLIDATION

SHORT TITLE

SEC. 951. This part may be cited as the "Student Loan Consolidation Act of 1985".

STUDENT LOAN CONSOLIDATION

SEC. 952. (a) LOAN CONSOLIDATION AUTHORIZED.—Part B of title IV of the Higher Education Act of 1965 (hereafter in this part referred to as the "Act") is amended by inserting after section 428B the following new section:

"CONSOLIDATION LOANS

"SEC. 428C. (a)(1) For the purpose of providing loans to eligible borrowers for consolidation of their obligations with respect to student loans made, insured, or guaranteed under this part or made under part E of this title, the Secretary or a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) shall enter into agreements in accordance with subsection (b) with the following eligible lenders:

"(A) the Student Loan Marketing Association;

"(B) agencies described in subparagraphs (D) and (F) of section 435(g)(1); and

"(C) eligible lenders described in subparagraphs (A), (B), (C), and (E) of such section.

"(2) Except as provided in section 429(e), no contract of insurance under this part shall apply to a consolidation loan unless such loan is made under an agreement pursuant to this section and is covered by a certificate issued in accordance with subsection (b)(2). Loans covered by such a certificate that is issued by a State or nonprofit private institution or organization shall be considered to be insured loans for the purposes of reimbursements under section 428(c), but no payment shall be made with respect to such loans under section 428(f) to any such State, institution, or organization.

"(3) For the purpose of this section, the term 'eligible borrower' means a borrower who—

"(A) has an outstanding indebtedness, at the time of application for a consolidation loan, to one or more lenders or programs under this title of not less than $5,000;

"(B) has not during the previous 4 months carried at an eligible institution at least one-half the normal full-time academic workload;

"(C) if in repayment status, is not delinquent with respect to any required payment on such indebtedness by more than 90 days; and

"(D) is not a parent borrower under section 428B(a)(1).

"(4) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except with respect to loans received under this title after the date of receipt of the consolidation loan. For the purpose of computing the outstanding indebtedness of such an individual, only loans received after such date shall be taken into account.

"(b)(1) Any lender described in clause (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) which provides—

"(A)(i) that, in the case of lenders described in subsection (a)(1)(C), the lender will make a consolidation loan to any eligible borrower on request of that borrower, if the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, and will make such loans to other eligible borrowers only to the extent permitted by the Secretary in an agreement under subsection (d);

"(ii) that, in the case of lenders described in subsection (a)(1)(B), the lender will make, subject to the availability of funds allocated for such purpose, a consolidation loan to any eligible borrower—

"(I) who is, or was at the time of receiving a loan which is selected for consolidation, a resident of the State of such lender; or

"(II) who received loans under this title while attending an institution of higher education in the State of such lender,

except that the lender may elect to limit further the availability of its loans under this section to those borrowers for whom the lender is the holder of a loan selected for consolidation; or

"(iii) that, in the case of the Student Loan Marketing Association, the lender will make a consolidation loan to any eligible borrower on request of that borrower;

"(B) that each consolidation loan made by the lender will bear interest, and be subject to repayment, in accordance with subsection (c);

"(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the maximum principal amount for all insured loans made to a bor-

rower, in an amount (i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(3)(A)(i), and (ii) which is equal to the sum of the unpaid principal, accrued unpaid interest and late charges of all loans received by the eligible borrower under this title which are selected by the borrower for consolidation;

"(D) that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans;

"(E) that, in the case of any lender, such lender will not make consolidation loans under this part from the proceeds of bonds or other obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, issued subsequent to the enactment date of the Student Loan Consolidation Act of 1985; and

"(F) such other terms and conditions as the Secretary or State or nonprofit private institution or organization (whichever is party to the agreement) may specifically require of the lender to carry out this section.

"(2) The Secretary shall issue a certificate of comprehensive insurance coverage under section 429(b) to a lender which has entered into an agreement with the Secretary under paragraph (1) of this subsection. A State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) may issue a certificate of comprehensive insurance coverage to a lender if the lender has entered into an agreement under paragraph (1) of this subsection. The Secretary shall not issue such a certificate under this paragraph to a lender described in clause (B) or (C) of subsection (a)(1) if the Secretary determines that such lender has reasonable access in its State, for the purpose of obtaining such a certificate, to a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b). In either case, such certificate shall, at a minimum, provide—

"(A) that all consolidation loans made by such lender in conformity with the requirements of this section will be insured against loss of principal and interest by the issuer of such certificate;

"(B) that a consolidation loan will not be insured unless the lender has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being consolidated (i) that the loan is a legal, valid, and binding obligation of the borrower; (ii) that each such loan was made and serviced in compliance with applicable laws and regulations; and (iii) in the case of loans under this part, that the insurance on such loan is in full force and effect;

"(C) the effective date and expiration date of the certificate;

"(D) the aggregate amount to which the certificate applies;

"(E) that, if the lender prior to the expiration of the certificate no longer proposes to make consolidation loans, the lender will so notify the issuer of such certificate in order that the certificate may be terminated (without affecting the insurance on any consolidation loan made prior to such termination); and

"(F) the terms upon which the issuer of the certificate may limit, suspend, or terminate the lender's authority to make consolidation loans under the certificate (without affecting the insurance on any consolidation loan made prior to such limitation, suspension, or termination).

"(3) A consolidation loan made pursuant to this section shall be insurable under a certificate issued pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which—

"(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him would not, under applicable law, create a binding obligation, endorsement may be required;

"(B) provides for the payment of interest and the repayment of principal in accordance with subsection (c) of this section and contains notice of the possibility of a revised repayment schedule under paragraph (2) of such subsection;

"(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—

"(i) during which the borrower is pursuing a full-time course of study at an eligible institution, is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary;

"(ii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition;

"(iii) not in excess of 3 years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled; or

"(iv) which is a single period, not in excess of 12 months, at the request of the borrower, during which the borrower is seeking and unable to find full-time employment; and

that any such period shall not be included in determining the repayment period provided pursuant to subsection (c)(2) of this section;

"(D) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

"(E)(i) contains a notice of the system of disclosure concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations.

"(c)(1) Consolidation loans made under this section shall bear interest at the rate of 10 per centum per annum on the unpaid principal balance of the loan, except that, if the consolidation loan is used for the purpose of discharging liability on a loan made pursuant to section 428B, the consolidation loan shall bear interest at a rate per annum on such unpaid balance which is equal to the highest applicable interest rate under section 427A on any loan which is selected for consolidation by the borrower. For the purposes of payment of special allowances under section 438(b)(2), the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.

"(2) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2)(F) and approved by the issuer of such certificate, the lender of a consolidation loan, with the agreement of the borrower, may establish such repayment terms as will promote the objectives of this section, including the establishment of graduated and income sensitive repayment schedules. In each case a consolidation loan shall be repaid as follows:

"(A) in the case of a consolidation loan the original amount of which is less than $7,500, such loan shall be repaid in not more than 10 years;

"(B) in the case of a consolidation loan the original amount of which equals or exceeds $7,500 but is less than $11,000, such loan shall be repaid in not more than 13 years; or

"(C) in the case of a consolidation loan the original amount of which equals or exceeds $11,000, such loan shall be repaid in not more than 15 years.

"(3) Repayment of a consolidation loan shall commence within 60 days after all holders have, pursuant to subsection (b)(1)(D), discharged the liability of the borrower on the loans selected for consolidation.

"(4) No origination fee or insurance premium shall be charged to the borrower on any consolidation loan, and no insurance premium shall be payable by the lender to the issuer of the certificate of insurance with respect to any such loan.

"(d)(1) If, within 18 months after the effective date of this section, an eligible lender described in subsection (a)(1)(B) for a State has not entered into an agreement with the Secretary or a State or nonprofit private institution or organization for purposes of making consolidation loans under this section, the Secretary may, after a hearing and upon a determination of need therefor, enter into an agreement for the purposes of making consolidation loans to eligible borrowers in such State with an eligible lender described in clause (B) or (C) of subsection (a)(1) from another State.

"(2) Notice of the hearing required by paragraph (1) of this subsection shall be sent to the Governor of the affected State and the eligible lenders described in subsection (a)(1)(B) for that State. At any such hearing representatives of such Governor and lenders may present evidence and testimony and examine witnesses, and full consideration shall be given to the views of such Governor and lenders with respect to the interests of the eligible borrowers in that State and with respect to the impact on programs of such lenders of allowing a lender described in clause (B) or (C) of subsection (a)(1) from another State to make consolidation loans pursuant to an agreement under this subsection in such State.

"(3) An agreement under this subsection may contain such terms and conditions as the Secretary may specifically require of the lender to carry out this section.

"(4) The requirements of paragraphs (1) and (2) of this subsection shall not apply if, in any State, an eligible lender described in subsection (a)(1)(B) from another State is functioning as a secondary market described in subparagraph (D) or (F) of section 435(g)(1) prior to the date of enactment of the Student Loan Consolidation Act of 1985 and such lender agrees to make consolidation loans to eligible borrowers in such State.

"(e) The authority to make loans under this section expires at the close of September 30, 1991. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b). Loans made under this section shall not be considered to be new loans made to students for purposes of section 424(a).".

(b) CONFORMING AMENDMENTS.—(1) Section 427(a) of the Act is amended by striking out "A loan" and inserting in lieu thereof "Except as provided in section 428C, a loan".

(2) Section 435(g)(1) of the Act is amended—

(A) by striking out "section 439 (o) and (q)" in subparagraph (G) and inserting in lieu thereof "sections 428C and 439(q)"; and

(B) by striking out "section 428(j)" in subparagraph (H) and inserting in lieu thereof "sections 428(h) and 428C".

(3) Section 438 of the Act is amended—

(A) in subsection (b)(5)(A)(ii), by inserting ", 428C," after "428B"; and

(B) in subsection (c)(2), by striking out "section 428B and section 439(o)" and inserting in lieu thereof "sections 428B and 428C".

(4) Section 439(d)(1)(C) of the Act is amended by striking out "428(A), and except with respect to loans under section 439(o)," and inserting in lieu thereof "428A, and except with respect to loans under section 428C,".

(c) SPECIAL ALLOWANCE.—(1) Section 438(b)(2)(A) of the Act is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(2) The first sentence of section 438(b)(2)(B)(i) of the Act is amended—

(A) by inserting "appropriate" before "quarterly rate" the second time it appears; and

(B) by inserting "or subparagraph (C)" before the period.

(3) Section 438(b)(2) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of loans made in accordance with section 428C, the applicable per centum to be added under clause (iii) of subparagraph (A) shall be 3 per centum.".

(d) COST EVALUATION REPORT.—The Secretary of Education shall evaluate the cost, efficiency, and impact of the consolidation loan program established by the amendments made by this section and shall report to the Congress not later than June 30, 1988, on the findings and recommendations required by this subsection.

PART D—SAVINGS ATTRIBUTABLE TO OPERATION OF GUARANTY AGENCIES

RECOVERY OF OUTSTANDING ADVANCES TO GUARANTY AGENCIES

SEC. 961. Section 422 of the Higher Education Act of 1965 (hereafter in this part referred to as "the Act") is amended by adding at the end thereof the following new subsection:

"(d)(1) Notwithstanding any other provision of this section, advances made by the Secretary under this section shall be repaid in accordance with this subsection and shall be deposited in the fund established by section 431. The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $75,000,000 during fiscal year 1988.

"(2) In determining the amount of advances which shall be repaid by a State or nonprofit private institution or organization under paragraph (1), the Secretary—

"(A) shall consider the solvency and maturity of the reserve and insurance funds of the State or nonprofit private institution or organization assisted by such advances; and

"(B) shall not seek repayment of such advances from any State described in subsection (c)(5)(B) during any year of its eligibility under such subsection.".

PRECLAIM COLLECTION ACTIVITIES

SEC. 962. (a) DELAY REQUIRED BEFORE SUBMISSION OF CLAIMS BY GUARANTY AGENCIES.—Section 428(c)(1)(A) of the Act is amended by adding at the end thereof the following new sentence: "In no case shall a State or nonprofit private institution or organization with which the Secretary has an agreement pursuant to subsection (b) file a claim for such reimbursement with respect to such losses prior to 240 days after the loan becomes delinquent with respect to any loan installment.".

(b) SUPPLEMENTAL PRECLAIMS ASSISTANCE.—(1) Section 428(c)(6)(A) of the Act is amended—

(A) by inserting after "assistance for default prevention," the following: "the administrative costs of supplemental preclaim assistance for default prevention,"; and

(B) by striking out "as such terms are defined in subparagraph (B)" and inserting in lieu thereof "as such terms are defined in subparagraph (B) or (C)".

(2) Section 428(c)(6) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C)(i) For purposes of this paragraph, 'administrative costs of supplemental preclaim assistance for default prevention' means (subject to divisions (ii) through (iv)) any administrative costs—

"(I) incurred by a guaranty agency in connection with a loan on which the guarantor has exercised preclaims assistance required or permitted under sections 428(c)(2)(A) and 428(f)(2), and which has been in delinquent status for at least 120 days; and

"(II) which are directly related to providing collection assistance to the lender on a delinquent loan, prior to a claim being filed by the guaranty agency,

including the attributable compensation of appropriate personnel (and in the case of personnel who perform several functions, only the portion of compensation attributable to the collection assistance), fees paid to locate a missing borrower, postage, equipment, supplies, telephone, and similar charges, but does not include overhead costs.

"(ii) The administrative costs for which reimbursement is authorized under this subparagraph must be clearly supplemental to the preclaim assistance for default prevention which the guaranty agency is required to provide pursuant to section 428(c)(2)(A) and section 428(f)(2) of this Act.

"(iii) The services associated with carrying out this subparagraph may be provided by the guaranty agency directly or under contract, except that such services may not be carried out by an organization or entity (other than the guaranty agency)—

"(I) that is the holder or servicer of the loan or an organization or entity that owns or controls the holder or servicer of the loan; or

"(II) that is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the holder or servicer of the loan.

"(iv) The costs associated with carrying out this subparagraph may not exceed 2 percent of the outstanding principal balance of each delinquent loan subject to the supplemental preclaim assistance authorized by this subparagraph or $100, whichever is less.".

GUARANTY AGENCY; LENDER OF LAST RESORT

SEC. 963. Section 428(b)(1) of the Act, as amended by section 911(b), is further amended—

(1) by striking out "and" at the end of clause (P);

(2) by striking out the period at the end of clause (Q) and inserting in lieu thereof a semicolon and the word "and"; and

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

"(R) provides for a lender of last resort in the State for all eligible borrowers who are unable to obtain a loan under this part and who are legal residents of the State or are accepted for enrollment in or are attending an eligible institution in the State.".

EFFECTIVE DATES

SEC. 964. (a) RECOVERY OF OUTSTANDING ADVANCES.—The amendment made by section 961 shall take effect on the date of enactment of this Act.

(b) PRECLAIM COLLECTION.—(1) The amendments made by section 962(a) of this Act shall apply to all loans, including loans made before the enactment of this Act, and shall take effect on the date of enactment of this Act.

(2) The amendments made by section 962 shall take effect on the date of enactment of this Act.

(c) LENDER OF LAST RESORT.—The amendments made by section 463 of this Act shall take effect 30 days after the date of enactment of this Act.

PART E—SAVINGS RELATED TO THE OPERATION OF THE STUDENT LOAN MARKETING ASSOCIATION

TREATMENT OF CERTAIN OBLIGATIONS

SEC. 971. (a) GENERAL RULE.—In order to contribute to carrying out the directions in the first concurrent resolution on the budget for the fiscal year 1986 (S. Con. Res. 32, 99th Congress, agreed to August 1, 1985) designed to reduce the Federal budget deficit, the Student Loan Marketing Association shall, during the fiscal year 1986, reduce the level of obligations owed to the Federal Financing Bank by $30,000,000 which, but for this section, will be paid to the Federal Financing Bank after October 1, 1986.

(b) SPECIAL RULE.—The amount described in subsection (a) may not be credited by the Student Loan Marketing Association to reduce the obligation to repay the Federal Financing Bank amounts which the Student Loan Marketing Association owes to the Federal Financing Bank in each of the fiscal years 1987 and 1988.

(c) SAVINGS PROVISION.—Nothing in this section shall be construed to authorize or require the Student Loan Marketing Association or the Federal Financing Bank to renegotiate the contract or other agreement under which the Student Loan Marketing Association agreed to pay amounts made available by the Federal Financing Bank to carry out section 439 of the Higher Education Act of 1965.

PART F—FLEXTIME PROVISIONS

AMENDMENTS TO CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

SEC. 981. (a) Section 102(a) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 328(a)) is amended to read as follows:

"(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to provisions of this section. For each workweek in which any such laborer or mechanic is so employed such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.".

(b) Section 102(b) of such Act is amended—

(1) by striking out "eight hours in any calendar day or in excess of" in paragraph (1); and

(2) by striking out "eight hours or in excess of" in paragraph (2).

AMENDMENT TO THE WALSH-HEALEY ACT

SEC. 982. Subsection (c) of the first section of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (41 U.S.C. 35(c)), commonly known as the Walsh-Healey Act, is amended by striking out "eight hours in any one day or in excess of".

EFFECTIVE DATE

SEC. 983. The amendments made by this part shall be effective upon enactment.

PART G—HEALTH AND HOSPITALS

CONTINUATION OF HEALTH INSURANCE FOR INDIVIDUALS LOSING EMPLOYMENT-RELATED COVERAGE

SEC. 984. (a) IN GENERAL.—The Public Health Service Act is amended by adding at the end the following new title:

"TITLE XXII—REQUIREMENTS FOR CERTAIN GROUP HEALTH INSURANCE POLICIES

"REQUIREMENT OF CONTINUATION COVERAGE AND OPEN ENROLLMENT PERIOD

"SEC. 2201. (a) In accordance with regulations which the Secretary shall prescribe—

"(1) each employer—

"(A) which is now or hereafter required during any calendar quarter to pay its employees the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (or would be required to pay its employees such wage but for section 13(a) of such Act), and

"(B) which during such calendar quarter employed an average number of employees of not less than 25,

shall include in any health benefits plan, and

"(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 314(d), 317, 318, 1002, 1525, or 1613, shall include in any health benefits plan,

offered to such employees in the calendar year beginning after such calendar quarter of the Secretary (i) the option of continuation coverage specified in section 2202, and (ii) the spousal open enrollment period specified in section 2203.

"(b) For purposes of this section, the term 'employer' does not include—

"(1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States;

"(2) a church, convention or association or churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization is an organization described in section 501(c)(3) of the Internal Revenue Code of 1954; or

"(3) a State or any political subdivision thereof, or any agency or instrumentality thereof.

"OPTION OF CONTINUATION COVERAGE

"SEC. 2202. (a) The requirement of continuation coverage referred to in clause (1) of section 2201(a) is that each covered employee or other qualified beneficiary, who would lose coverage under the health benefits plan because of a qualifying event, is given, in accordance with this section, the option of electing continuation coverage under the plan.

"(b)(1) The option of electing continuation coverage must be offered during a period that—

"(A) begins not later than the termination date (as defined in subsection (c)(2)),

"(B) is of at least 60 days duration, and

"(C) ends not earlier than 60 days after the date the qualified beneficiary is notified under subsection (f)(4) or the termination date, whichever date is later.

"(2) Unless otherwise specified in the election—

"(A) any such election by a covered employee shall be deemed to include an election with respect to all other qualified beneficiaries of the employee whose coverage would, but for continuation coverage provided in accordance with this section, be affected by the qualifying event; and

"(B) except as provided in subparagraph (A), any such election by an individual who is a qualified beneficiary described in subsection (g)(2)(A) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary (other than the covered employee) whose coverage would, but for continuation coverage provided in accordance with this section, be affected by the qualifying event.

"(c) For purposes of this section:

"(1) A 'qualifying event' under a health benefits plan, with respect to a covered employee, is any of the following events if the coverage of a qualified beneficiary under the plan would, but for continuation coverage provided in compliance with this section, be terminated by the occurrence of the event:

"(A) The termination, or reduction of hours, of the covered employee's employment (other than for cause).

"(B) The death of the covered employee.

"(C) The divorce or separation of the covered employee from his or her spouse.

"(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(2) The term 'termination date' means, with respect to a qualifying event, the date on which coverage of a qualified beneficiary under a group health plan would be terminated under the plan but for continuation coverage provided in compliance with this section.

"(d) Any continuation coverage elected by or on behalf of a qualified beneficiary shall meet the following requirements:

"(1) The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(2) The coverage shall consist of coverage which is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred.

"(3) If, at the time of the qualifying event, an individual was covered under the health benefits plan because of the individual's relationship to a covered employee and the individual is a qualified beneficiary, the option must be provided of continuing coverage of the individual.

"(4) The coverage shall be for a period commencing upon the expiration date and ending not earlier than the earliest of the following:

"(A) In the case of a qualifying event described in subsection (c)(1)(A) (relating to unemployment or reduction of employment), 18 months after the date the continued coverage begins.

"(B) In the case of a qualifying event not described in subsection (c)(1)(A), thirty-six months after the date the continued coverage begins.

"(C) The date on which the employer ceases to provide any health benefits plan to employees.

"(D) The date on which there is a failure in making timely payment of any premium required under the plan with respect to the qualified beneficiary.

"(E) The date on which the qualified beneficiary first becomes, after the date of the election, a covered employee under any other health benefits plan offered by an employer or becomes entitled to benefits under title XVIII of the Social Security Act.

"(F) In the case of a qualified beneficiary spouse described in subsection (g)(2)(A), the date on which the qualified beneficiary remarries and becomes covered under a health benefits plan as the spouse of a covered employee.

"(G) In the case of any individual who is a qualified beneficiary by reason of having been a covered dependent child of a covered employee, the date on which the individual ceases to be a covered dependent child of the qualified beneficiary.

"(5) In the case of a qualified beneficiary whose period of continued coverage expires under subparagraph (A) or (B) of paragraph (4), the plan must provide to the beneficiary, during the 180-day period ending on the date of expiration of the period of continued coverage, the option of enrollment under a conversion health plan otherwise generally available to beneficiaries under the plan.

"(e)(1) The total premium charged by a health benefits plan with respect to any qualified beneficiary for continuation coverage under the plan shall not exceed the sum of employer premiums and employee premiums generally charged with respect to coverage under the plan of similarly situated beneficiaries with respect to whom a qualifying event has not occurred. The total of all premiums charged by the plan in any plan year may be based upon reasonably anticipated community costs for such plan year of the entire pool of covered employees and other beneficiaries under the plan, including qualified beneficiaries receiving continuation coverage under the plan under this section.

"(2) The plan may provide for payment of the total premium by the qualified beneficiary receiving such coverage, or for payment of all or part of such premium by the employer or other party and payment of the remainder of such premium by such beneficiary. The plan shall provide for payment of any premium by a qualified beneficiary in monthly installments if so elected by the beneficiary. If an election is made during an election period but after the termination date, the plan shall permit payment of any premium for continuation coverage during the preceding period to be made within 45 days of the date of the election.

"(3) As used in this subsection, the term 'premium' means any amount payable with respect to the provision of coverage under a health benefits plan.

"(f) In accordance with regulations of the Secretary—

"(1) the health benefits plan must provide, at the time of commencement of coverage under the plan, for written notice to each covered employee and spouse of the employee (if any) of the rights under this section;

"(2) the employer of a covered employee under the plan must notify the health benefits plan administrator if the employee dies;

"(3) each covered employee is responsible for notifying the health benefits plan administrator of the occurrence of any qualifying event (other than that described in subsection (c)(1)(B)) respecting that employee; and

"(4) the health benefits plan administrator must notify each qualified beneficiary, within a period of 14 days after the date the administrator is notified concerning a qualifying event affecting that beneficiary, of—

"(A) the termination date with respect to the beneficiary, and

"(B) the beneficiary's right to elect continuation coverage under this section and the election period established under subsection (b)(1) during which the beneficiary can exercise that right.

"(g) For purposes of this section:

"(1) The term 'covered employee' means a individual who is (or was) provided coverage under a health benefits plan by virtue of the individual's employment or previous employment with an employer.

"(2) The term 'qualified beneficiary' means, with respect to a covered employee

under a health benefits plan, the covered individual and any other individual who, on the date before the date of a qualifying event for that employee—

"(A) is a beneficiary under the plan as the spouse of the employee and had been married to the employee for at least the immediately preceding 30-day period, or

"(B) is a beneficiary under the plan as a covered dependent child of the employee.

"(3) The term 'covered dependent child' means, with respect to a covered employee, an individual who meets the generally applicable requirements of the plan for treatment as a dependent child covered under the plan by reason of the coverage of the employee under the plan.

"(4) The term 'health benefits plan administrator' means, in connection with a health benefits plan, any person who provides for administrative functions relating to enrollment of individuals under the plan. For purposes of this subparagraph, the term 'person' includes one or more individuals, governments or agencies of the United States or any State or political subdivision thereof, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint ventures, joint stock companies, societies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

"ENFORCEMENT

"SEC. 2204. (a) Any employer (other than a State or political subdivision thereof, or any agency or instrumentality thereof) who knowingly does not comply with one or more of the requirements of this title shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each 30-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

"(b) In any proceeding by the Secretary to assess a civil penalty under this section, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieved rapid compliance after notification by the Secretary of a noncompliance.

"(c) In any civil action brought to review the assessment of a civil penalty assessed under this section, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

"(d) Any employer (other than a State or political subdivision thereof, or any agency or instrumentality thereof) who knowingly does not comply with one or more of the requirements of this title shall be liable to individuals for damages (including health care costs incurred) resulting from the employer's failure to comply with the requirements.

"(e) If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with one or more requirements of this title, the Secretary shall terminate payments to such State under section 314(d), 317, 318, 1002, 1525, and 1613 and notify the Governor or such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.".

(b) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 1986.

(2) SPECIAL RULE FOR COLLECTIVE-BARGAINING AGREEMENTS.—In the case of a health benefits plan maintained pursuant to one or more collective-bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the date on which the last of the collective-bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective-bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective-bargaining agreement.

(c) NOTIFICATION TO COVERED EMPLOYEES.—At the time that the amendments made by this section apply to a health benefits plan described in section 2201 of the Public Health Service Act, the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage and open enrollment period required under sections 2202 and 2203 of that Act. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 2202(f)(1) of that Act.

PART H—GRADUATE MEDICAL EDUCATION

COUNCIL ON GRADUATE MEDICAL EDUCATION

SEC. 986. (a) Title VII of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART H—GRADUATE MEDICAL EDUCATION

"COUNCIL ON GRADUATE MEDICAL EDUCATION

"SEC. 799. (a) ESTABLISHMENT OF COUNCIL.—There is established the Council on Graduate Medical Education (hereafter in this section referred to as the "council"). Prior to July 1, 1988, and every three years thereafter, the council shall provide advice and make recommendations to the Secretary with respect to—

"(1) the supply of physicians in the United States;

"(2) current and future needs for physicians to practice in primary care specialties and in medical specialties which the Council determines to have a relative shortage of physicians;

"(3) issues relating to foreign medical school graduates;

"(4) appropriate Federal policies with respect to the matters specified in paragraphs (1), (2), and (3), including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs; and

"(5) appropriate efforts to be carried out by hospitals, schools of medicine, and schools of osteopathy with respect to the matters specified in paragraphs (1), (2), and (3), including efforts for changes in undergraduate and graduate medical education programs.

"(b) MEMBERSHIP.—The Council shall be composed of—

"(1) the Assistant Secretary for Health or the designee of the Assistant Secretary;

"(2) the Administrator of the Health Care Financing Administration;

"(3) the Chief Medical Director of the Veterans' Administration;

"(4) ten members appointed by the Secretary from representatives of health care providers, national and specialty physician organizations, schools of medicine, organizations of graduates of foreign medical schools, and hospitals which provide graduate medical education; and

"(5) four members appointed by the Secretary from representatives of health insurers, business, and labor.

"(c) TERMS.—(1) Members of the Council appointed under paragraphs (4) and (5) of subsection (b) shall be appointed for a term of four years, except that the term of office of the members first appointed shall expire, as designated by the Secretary at the time of appointment, four at the end of one year, four at the end of two years, three at the end of three years, and three at the end of four years.

"(2) The Secretary shall appoint the first members to the Council under paragraphs (4) and (5) of subsection (b) within 60 days after the date of enactment of this section.

"(d) CHAIRMAN.—The Council shall elect one of its members as Chairman of the Council.

"(e) QUORUM.—Nine members of the Council shall constitute a quorum, but a lesser number may hold hearings.

"(f) VACANCIES.—Any vacancy in the Council shall not affect its power to function.

"(g) COMPENSATION.—Each member of the Council who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed by GS-18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the Council. A member of the Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"(h) POWERS.—In order to carry out the provisions of this section, the Council is authorized to—

"(1) collect such information, hold such hearings, and sit and act at such times and places, either as a whole or by subcommittee, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Council or such subcommittee may consider advisable; and

"(2) request the cooperation and assistance of Federal departments, agencies, and instrumentalities in carrying out the provisions of this section, and such departments, agencies, and instrumentalities are authorized to provide such cooperation and assistance.

"(i) REPORTS.—Prior to July 1, 1988, and every three years thereafter, the Council shall prepare and transmit a report to the Secretary and to the Congress which specifies the activities of the Council during the period for which the report is made and contains advice and recommendations as required under subsection (a).".

PART I—SINGLE EMPLOYER PENSION PLANS

SEC. 987. SHORT TITLE.

This part may be cited as the "Single-Employer Pension Plan Amendments Act of 1985".

SEC. 988. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and affect a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system may encourage employers to terminate pension plans, to evade their obligations to pay benefits, and to shift unfunded pension liabilities onto the termination insurance system and the other premium payers.

(b) ADDITIONAL FINDINGS.—The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans is necessary—

(1) to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;

(3) to maintain the premium costs of such system at a reasonable level; and

(4) to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) DECLARATION OF POLICY.—It is the policy of this part—

(1) to foster and facilitate interstate commerce;

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans;

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;

(5) to maintain the premium costs of such system at a reasonable level; and

(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

SEC. 989. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Except as otherwise specifically provided, whenever in this part 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 a section or other provision of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

SEC. 990. DEFINITIONS.

(a) IN GENERAL.—Section 4001(a) (29 U.S.C. 1301(a)) is amended—

(1) by striking out "and" at the end of paragraph (11);

(2) by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraphs:

"(13) 'contributing sponsor' means, with respect to a single-employer plan, a person who is responsible for meeting the funding requirements prescribed under section 302 of this Act and section 412 of the Internal Revenue Code of 1954, other than a person who is so responsible solely by reason of section 302(c)(11) of this Act or section 412(c)(11) of such Code;

"(14) 'controlled group' means, with respect to a single-employer plan, a group consisting of a person and all other persons under common control with such person under the principles prescribed in subsection (b)(1);

"(15) 'single-employer plan' means, except as otherwise specifically provided in this title, any plan which is not a multiemployer plan;

"(16) 'composite single-employer plan' means a single-employer plan that has two or more contributing sponsors, all of whom are not within the same controlled group;

"(17) 'amount of unfunded guaranteed benefits' means, with respect to a single-employer plan, an amount equal to the excess of—

"(A) the actuarial present value of the benefits under the plan guaranteed under this title, determined on the basis of assumptions prescribed by the corporation for purposes of section 4044, over

"(B) the current value of the assets of the plan which are allocated to such benefits in accordance with section 4044;

"(18) 'final benefit obligation' means, with respect to a plan termination, all benefits of a participant or beneficiary described in section 4044(a) as of the close out date for a standard termination specified in section 4041(b)(3), and for a distress termination, or termination by the corporation, the termination date specified in section 4048; and

"(19) 'person' has the meaning set forth in section 3(9).".

(b) TECHNICAL CORRECTION OF ERROR IN MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.—Section 4001 (29 U.S.C. 1301) is further amended—

(1) by striking out the amendments made by section 402(a)(1)(F) of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1297) (adding new paragraphs after a subsection (c)(1));

(2) by inserting "(1)" after the subsection designation of subsection (b); and

(3) by adding at the end of subsection (b) the following new paragraphs:

"(2) For purposes of this title, except as otherwise provided in this title, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of the Internal Revenue Code of 1954 (determined, in the case of plan termination, as if the plan had continued beyond the termination date).

"(3) For purposes of subtitle E, 'Secretary of the Treasury' means the Secretary of the Treasury or such Secretary's delegate.".

SEC. 991. SINGLE-EMPLOYER PLAN TERMINATION.

(a) IN GENERAL.—Section 4041 (29 U.S.C. 1341) is amended—

(1) by striking out subsections (a) through (d);

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(3) by inserting after the section designation the following new subsection:

"(a)(1) Except as provided in section 4042, a single-employer plan may be terminated only in a standard termination under subsection (b) or a distress termination under subsection (c).

"(2)(A) If the plan to be terminated is the subject of one or more collective bargaining agreements between one or more employee organizations (within the meaning of section 3(4)) and one or more employers, the plan administrator shall, not less than 30 days before filing any notice of intent to terminate such plan under subsection (b)(1)(A) or (c)(1)(A) submit to each such employee organization a separate notification that such notice of intent to terminate will be filed with the corporation on a specified date.

"(B) The plan administrator shall provide the separate notification required under subparagraph (A) to—

"(i) the person who has been designated by the employee organization to receive such notification under the collective bargaining agreement or the plan, or

"(ii) such other person as the employee organization may designate in writing.

"(C) The plan administrator shall certify compliance with this paragraph in the notice of intent to terminate such plan filed under subsection (b)(1)(A) or (c)(1)(A).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to terminations for which notices of intent to terminate under section 4041 are filed on or after the date of the enactment of this Act.

SEC. 992. STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 4041 (29 U.S.C. 1341) (as amended by section 991 of this Act) is further amended by inserting after subsection (a) the following new subsection:

"(b)(1)(A) A single-employer plan is considered to have terminated in a standard termination only if—

"(i) the plan administrator has filed with the corporation a notice of intent to terminate the plan in a standard termination on a specified termination date and such date is not earlier than 10 days after the date of the filing of such notice, and such notice includes information that the corporation may require; and

"(ii) the plan has been amended to provide that (effective on the termination date), accrued benefits, as defined in section 411 of the Internal Revenue Code of 1954, shall not increase after the termination date, except as required to meet the qualification requirements of subchapter D of chapter 1 of the Internal Revenue Code of 1954.

"(B) On or before the date of the filing of the notice of intent to terminate, the plan administrator shall—

"(i) notify each plan participant that such notice of intent to terminate has been or will be filed, and

"(ii) provide a copy of the notice of intent to terminate to each employee organization (within the meaning of section 3(4) of this Act) representing participants under such plan as of such date.

"(C)(i) Such standard termination shall be effective as of the termination date set forth in such notice of intent to terminate filed under subparagraph (A)(i).

"(ii) For purposes of subparagraph (B), in the case of a notice of intent to terminate that must be provided to an employee organization, the required notice shall be provided to—

"(I) the person who has been designated by the employee organization to receive notice under the collective bargaining agreement or the plan, or

"(II) such other person as the employee organization may designate in writing.

"(2) If, after the termination of the plan, it has insufficient assets to pay when due all benefits payable under the plan during a plan year, the contributing sponsors of the plan and the members of their controlled groups shall be jointly and severally liable to contribute to the plan, when necessary, such additional amounts as are necessary to pay such benefits when due.

"(3)(A) A single-employer plan terminated in a standard termination under this subsection may close out its affairs only if—

"(i) such plan has assets sufficient to discharge when due all final benefit obligations of the plan, and

"(ii) such closing out is carried out in accordance with this paragraph.

"(B)(i) The plan administrator shall, not later than 30 days before the close out date, notify each plan participant and each employee organization (within the meaning of section 3(4)) representing participants under such plan as of a close out date specified in the notification, that—

"(I) the plan will close out its affairs on such date, and

"(II) a final distribution of assets will take place on a proposed date of distribution.

"(ii) The proposed date of distribution shall be as soon as practicable after the close out date.

"(C) If the close out date of the plan falls on the same date as the termination date of the plan, the notification requirements of this paragraph with respect to the corporation, each participant, and each employee organization referred to in subparagraph (B) are met if the notice of intent to terminate required under paragraph (1)(A)(i) also contains the information necessary to meet the requirements of this paragraph.

"(D)(i) At least 30 days before the proposed date of distribution of assets pursuant to the closing out of the plan, the plan administrator shall send a notice to the corporation setting forth certification by an enrolled actuary—

"(I) of the amount (as of the proposed date of distribution) of the assets of the plan,

"(II) of the actuarial present value (as of the proposed date of distribution) of the final benefit obligations under the plan (in accordance with regulations of the corporation), and

"(III) that the assets of the plan are sufficient (under regulations of the corporation) to discharge when due such final benefit obligations.

"(ii)(I) If the corporation determines that the requirements of clause (i) have not been met, within 30 days after receipt of such notice, the corporation shall provide the plan administrator with a notice of noncompliance with such clause.

"(II) The corporation and the plan administrator may agree to extend such 30-day period by written agreement or the corporation may apply to the United States district court for an order extending such period.

"(III) This clause does not apply to plans described in subparagraph (F).

"(iii) Except as provided in subparagraph (F), the plan may commence the final distribution of assets pursuant to the closing out of the plan only if—

"(I) the period described in clause (ii) has expired, and

"(II) the plan administrator has not received such a notice of noncompliance from the corporation during such period.

"(E) In connection with the final distribution of assets pursuant to the closing out of the plan, the plan administrator shall distribute plan assets in accordance with section 4044 by—

"(i) purchasing irrevocable commitments to provide when due all benefits described in subparagraph (A) to all participants and beneficiaries, or

"(ii) otherwise fully satisfying the obligation to provide when due all such benefits in accordance with the provisions of the plan and any applicable regulations of the corporation.

"(F)(i) With respect to plans described in this subparagraph, a final distribution of assets cannot occur until the corporation (I) determines that the assets of the plan are sufficient to provide when due all final benefit obligations, and (II) issues a notice of sufficiency.

"(ii) A plan is described in this subparagraph if—

"(I) the plan has filed—

"(aa) a notice of intent to terminate with the corporation before the date of enactment of the Single-Employer Pension Plan Amendments Act of 1985 and for which the corporation has not issued a notice of sufficiency before such date of enactment in accordance with this subsection as in effect prior to such date of enactment, or

"(bb) a notice of intent to terminate in a standard termination with the corporation on or after such date of enactment and before March 1, 1986, and

"(II) the lesser of 10 participants or 10 percent of the participants under the plan have filed complaints with the corporation regarding such termination within 15 days of such date of enactment for plans described in subdivision (aa) or within 45 days of the filing of the notice described in subdivision (bb).

"(iii)(I) Except as provided in subclause (II), the corporation shall consider and respond to such complaints no later than 90 days after the date the corporation makes the determination described in clause (i)(I). The corporation may hold an informal hearing to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of part I of title 5, United State Code.

"(II) In the case of a plan described in subclause (II)(aa) that has been granted an extension at the request of the corporation pursuant to section 4041(d) as in effect prior to the date of enactment of the Single-Employer Pension Plan Amendments Act of 1985, because of circumstances wholly within the control of the corporation, the period within which the corporation shall consider and respond to such complaints shall be 14 days.

"(iv)(I) Except as provided in subclause (II), the corporation shall not issue a notice of sufficiency in accordance with this subparagraph until 90 days after the date the corporation makes the determination described in clause (i)(I), except in the case of a plan described in clause (iii)(II) for which this period shall be 14 days.

"(II) The corporation may issue a notice of sufficiency at any time after the corporation makes the determination described in clause (i)(I) if the contributing sponsor demonstrates to the satisfaction of the corporation (except in the case of an acquisition, takeover, or leveraged buyout) that it is experiencing substantial business hardship or if the risk of loss to the corporation is increasing. For purposes of this subclause, substantial business hardship means that the contributing sponsor has been operating, and can demonstrate that it will continue to operate, at an economic loss.

"(G) The corporation shall audit a random selection of participants benefits within a plan closed out in accordance with this paragraph to ascertain whether their assets have been distributed in compliance with the requirements of this title.

"(4)(A) Except as provided in subparagraph (B), if a court of competent jurisdiction determines in a civil action after the final distribution of assets is completed that a plan has failed to discharge when due the final benefit obligations of the plan to any participant or beneficiary in accordance with paragraph (3) and the final benefit obligations are not fully satisfied by the defendant in such action within 90 days after such court issues such determination (or such additional period of time as the court may order), final benefit obligations of a participant or beneficiary shall be—

"(i) treated by the corporation as though they were benefits provided under a single-employer plan that terminated in a distress termination under subsection (c) on the close-out date, and

"(ii) guaranteed by the corporation under section 4022 in the same manner and to the same extent as such benefits would have been guaranteed under section 4022.

"(B) The corporation may not guarantee under subparagraph (A)(ii) any portion of the final benefit obligations of a participant or beneficiary which has been discharged when due by the plan or satisfied by the defendant in the civil action described in subparagraph (A).".

(b) AMENDMENTS RELATING TO FUNDING.—

(1) Section 210 (29 U.S.C. 1060) is amended by adding at the end thereof the following new subsection:

"(e) In the case of a plan terminated in a standard termination under section 4041(b), all contributing sponsors and members of their controlled groups shall be jointly and severally liable for the minimum funding standard established under section 302(c)(11).".

(2) Section 301(c) (29 U.S.C. 1081(c)) is amended by adding at the end thereof the following new sentence: "This part applies with respect to a single-employer plan until the last day of the plan year in which the plan terminates (within the meaning of section 4041(c) or 4042) or all assets are distributed pursuant to section 4041(b).".

(3) Section 302(c) (29 U.S.C. 1082(c)) is amended by adding at the end thereof the following new paragraph:

"(11) In the case of a plan terminated in a standard termination under section 4041(b), if, for any plan year ending after such termination, the plan has insufficient assets to pay when due all benefits payable under the plan during the plan year, the accumulated funding deficiency for such plan year shall equal the greater of—

"(A) the accumulated funding deficiency determined without regard to this paragraph, or

"(B) the amount of benefits payable under the plan for that plan year and for prior plan years less the sum of—

"(i) such benefits paid for that plan year and for prior plan years, and

"(ii) the value of the plan's assets at the end of the plan year."

(4) The last sentence of section 304(b)(1) (29 U.S.C. 1084(b)(1)) is amended by inserting "or the plan is terminated other than in a standard termination pursuant to section 4041(b)" after "preceding sentence".

SEC. 993. DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 4041 (29 U.S.C. 1341) (as amended by sections 991 and 992 of this Act) is further amended by inserting after subsection (b) the following new subsection:

"(c)(1)(A)(i) A single-employer plan may terminate in a distress termination only if—

"(I) the plan administrator files with the corporation a notice of intent to terminate the plan in a distress termination as of a proposed termination date and such date is not earlier than 10 days after the date of the filing of such notice, and such notice includes information that the corporation may require; and

"(II) the plan administrator receives from the corporation a notice that the corporation has determined that one of the requirements described in paragraph (2)(A) has been met.

"(ii) On or before the date of the filing of the notice, the plan administrator shall—

"(I) notify each plan participant that such notice of intent to terminate has been or will be filed, and

"(II) provide a copy of the notice of intent to terminate to each employee organization (within the meaning of section 3(4) of this Act) representing participants under such plan as of such date.

"(B)(i) Such distress termination shall be effective as of the termination date specified under section 4048(a).

"(ii) For purposes of subparagraph (A)(ii)(II), in the case of a notice of intent to terminate under this subsection that must be provided to an employee organization, the required notice shall be provided to—

"(I) the person who has been designated by the employee organization to receive notice under the collective bargaining agreement or the plan, or

"(II) such other person as the employee organization may designate in writing.

"(2)(A) In order to terminate a plan in a distress termination, the plan administrator must demonstrate to the satisfaction of the corporation that the requirements of any of the following clauses have been met:

"(i) The contributing sponsors and the substantial members of their controlled groups (if any) have each filed, or have had filed against them, as of the termination date, a petition seeking liquidation in a case under title 11, United States Code (or under any similar law of a State or political subdivision of a State) which has not, as of the termination date, been dismissed or converted to a case under chapter 11 of such title (or under any similar law of a State or political subdivision of a State) in which reorganization is sought.

"(ii)(I) The contributing sponsors and the substantial members of their controlled groups (if any) have each filed, or have had filed against them, as of the termination date a petition seeking reorganization in a case under title 11, United States Code (or under any similar law of a State or political subdivision of a State) which has not, as of the termination date, been dismissed; and

"(II) the bankruptcy court approves the termination.

"(iii) A contributing sponsor provides to the corporation substantial evidence that, unless a distress termination occurs, the contributing sponsors and the substantial members of such sponsors' controlled groups (if any) will each be unable to pay their respective debts when due and will be unable to continue in business.

"(B)(i) For purposes of this paragraph, the term 'substantial member' means, with respect to a controlled group, a person whose assets comprise at least 5 percent of the total assets of the controlled group.

"(ii) Such term includes any member of the controlled group who does not meet the requirements of clause (i) but did meet such requirements for purposes of subparagraphs (A)(i) and (A)(ii), as of the date of the filing of the petition referred to therein.

"(3)(A)(i) Not later than 90 days after the date on which the corporation determines that the requirements of one or more of the clauses of paragraph (2)(A) have been met (or such extended period of time as may be provided for pursuant to subparagraph (D)), the corporation shall make a determination under subparagraph (B) or (C).

"(ii) The plan administrator may not distribute plan assets pursuant to the termination unless and until the plan administrator receives a notification under subparagraph (B).

"(B)(i) If the corporation finds under subparagraph (A) that plan assets are sufficient to pay when due all basic benefits under the plan, the corporation shall notify the plan administrator of such finding as soon as practicable after such finding.

"(ii) If a plan administrator receives a notice under clause (i), such administrator shall distribute the assets of the plan in accordance with section 4044 and regulations of the corporation.

"(C)(i) If the corporation finds under subparagraph (A) that it is unable to determine that plan assets are sufficient to pay when due all basic benefits under the plan, the corporation shall notify the plan administrator as soon as practicable after such finding.

"(ii) If the corporation issues a notice under clause (i), the corporation shall institute proceedings under section 4042.

"(iii) If a plan administrator receives a notice under clause (i), such administrator shall refrain from taking any action to carry out the proposed termination under this subsection.

"(D)(i) The 90-day period referred to in subparagraph (A) may be extended—

"(I) by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or

"(II) by court order requested by the corporation and issued by an appropriate court (as defined in section 4042(g)).

"(ii) Such 90-day period may be further extended—

"(I) by subsequent written agreements signed by the corporation and the plan administrator before the expiration of any existing extension, or

"(II) by subsequent order of the court.

"(iii) Any extension of such 90-day period may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as are specified in the court order.

"(4)(A) Upon the filing of a notice of intent to terminate under paragraph (1)(A), the plan administrator—

"(i) shall pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, and

"(ii) may not use plan assets to purchase irrevocable commitments to provide benefits from an insurer.

"(B) If the plan administrator knows or has reason to know that plan assets are not sufficient to pay when due benefits guaranteed under this title, the plan administrator shall limit the payment of benefits (in accordance with regulations of the corporation) so that the amount of such payment is equal to the sum of—

"(i) the estimated amount of benefits of the plan which are guaranteed by the corporation, and

"(ii) the estimated amount of other benefits to which plan assets are allocated under section 4044.

"(5) If a single-employer plan has been terminated under a distress termination solely on the basis of the filing of a petition seeking liquidation in a case under title 11, United States Code (or under a similar law of a State or a political subdivision of a State) as provided in paragraph (2)(A)(ii) and such case is dismissed or converted to a case under chapter 11 of such title (or under a similar law of a State or a political subdivision of a State) in which reorganization is sought, unless the corporation determines that such restoration is impracticable, the distress termination shall be void and the plan shall be restored to pretermination status (effective as of the termination date).".

(b) CONFORMING AMENDMENTS.—Section 4041(e) (as redesignated by section 991(a)(2) of this Act is amended—

(1) by striking out "subsection (a)" and inserting in lieu thereof "this section"; and

(2) by inserting "in a standard termination" after "terminated".

SEC. 994. APPOINTMENT OF RECEIVERS; CLARIFICATION OF AMOUNTS DUE THE CORPORATION; MEMBERSHIP OF SECTION 4042 TRUSTEE ON CREDITORS COMMITTEES.

(a) APPOINTMENT OF RECEIVERS BY THE CORPORATION.—Section 4004 (29 U.S.C. 1304) is amended—

(1) by striking out the caption and inserting in lieu thereof the following:

"APPOINTMENT OF RECEIVERS BY THE CORPORATION",

(2) by striking out "described in section 4042, appoint" in the first sentence of subsection (a) and inserting in lieu thereof "that—

"(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4971(a) of such Code,

"(2) the plan is unable to pay benefits when due, or

"(3) the plan has been abandoned,

appoint", and

(3) by striking out subsections (e) and (f).

(b) CLARIFICATION OF AMOUNTS DUE THE CORPORATION.—Section 4042(d)(1)(B)(ii) (29 U.S.C. 1342(d)(1)(B)(ii)) is amended by inserting before the semicolon at the end thereof the following: ", including the collection of such amounts from the persons obligated to meet the requirements of section 302 of this Act, section 412 of the Internal Revenue Code of 1954, or the terms of the plan".

(c) MEMBERSHIP OF SECTION 4042 TRUSTEE ON CREDITORS COMMITTEES.—Section 4042 (29 U.S.C. 1342) is further amended by adding at the end thereof the following new subsection:

"(i)(1) A trustee appointed under subsection (b) or (c) shall have the power to serve as a member on—

"(A) any committee of creditors in any proceeding under title 11, United States Code, or

"(B) any proceeding to effect a composition, extension, settlement, or assignment with or for the benefit of creditors.

"(2) If the corporation serves as trustee under subsection (b) or (c), it shall be considered, for purposes of such title 11, to be a person (within the meaning of section 101(30) of such title 11).".

SEC. 995. RESTORATION OF PLANS TERMINATED UNDER STANDARD OR DISTRESS TERMINATIONS.

Section 4047 (29 U.S.C. 1347) is amended by adding at the end thereof the following new sentence: "Under regulations which the corporation may prescribe with respect to the procedure to be followed, the plan administrator may at any time take such actions as are necessary to restore a plan which has been terminated under section 4041 to its status before the termination, except that no plan which has been terminated in a distress termination under section 4041(c) may be so restored without the prior approval of the corporation.".

SEC. 996. AMENDMENTS TO PRIMARY LIABILITY PROVISIONS.

(a) PART 1 OF SUBTITLE D OF TITLE IV.—Subtitle D of title IV (29 U.S.C. 1361 et seq.) is amended—

(1) by amending the subtitle heading to read as follows:

"SUBTITLE D—OBLIGATIONS OF THE CORPORATION; LIABILITY OF EMPLOYERS AND OTHER PERSONS";

and

(2) by inserting after the subtitle heading the following:

"Part 1—Obligations of the Corporation; Primary Liability for Single-Employer Plan Termination".

(b) LIABILITY FOR DISTRESS TERMINATIONS AND TERMINATIONS BY THE CORPORATION.—Section 4062 (29 U.S.C. 1362) is amended to read as follows:

"LIABILITY TO THE CORPORATION FOR TERMINATION OF SINGLE-EMPLOYER PLANS UNDER A DISTRESS TERMINATION OR A TERMINATION BY THE CORPORATION

"SEC. 4062. (a)(1) Any person who is, on the termination date of a single-employer plan terminated under section 4041(c) or 4042, a contributing sponsor of such plan or a member of such sponsor's controlled group shall incur liability as provided in this section.

"(2) If two or more persons are liable under this section in connection with such a termination and are, on the termination date, under common control, each person shall be jointly and severally liable under this section.

"(b)(1)(A) Except as provided in paragraph (2), a person described in subsection (a) shall be liable to the corporation (with interest calculated from the termination date) in an amount equal to the sum of—

"(i) an amount (in cash or securities acceptable to the corporation) equal to the outstanding balance (determined as of the termination date) of any accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1954) of the plan, including any amounts that would have been due but for a waiver or an extension of an amortization period, and

"(ii) the amount of the unfunded guaranteed benefits under the plan (as of the termination date), determined after taking into account the value of any amounts described in clause (i).

"(B) The amount of liability described in subparagraph (A) shall be due and payable as of the termination date of the plan.

"(C) For purposes of subparagraph (A)(ii), in determining the amount of unfunded guaranteed benefits, the cost of administrative services related to termination of the plan (without regard to the date incurred) shall be subtracted when computing the current value of assets of the plan allocated to benefits.

"(D) For purposes of this paragraph, in any case in which a waiver of the minimum funding standards under section 303 of this Act and section 412(d) of the Internal Revenue Code of 1954 or an extension of an amortization period under section 304 of this Act and section 412(e) of such Code is requested with respect to a single-employer plan for a plan year ending on or after the date of enactment of the Single-Employer Pension Plan Amendments Act of 1985, and such request has been neither granted nor denied (as of the termination date), the amount of the increase in the plan's accumulated funding deficiency under section 302 of this Act and section 412 of such Code which would result if the request is denied shall be considered an increase in the plan's accumulated funding deficiency.

"(2)(A) If the amount described in paragraph (1)(A)(ii) is greater than 30 percent of the sum of the individual net worth of all persons who each have a net worth greater than zero and who are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups, a person described in subsection (a) shall be liable to the corporation (in lieu of the amount described in paragraph (1)(A)(ii) and not to exceed, in the aggregate, such amount plus interest accrued from the termination date) in an amount equal to the sum of—

"(i) such 30-percent amount plus interest accrued from the termination date (payable only in cash or securities acceptable to the corporation), and

"(ii) the annual liability payments required under subparagraph (C).

"(B) For purposes of subparagraph (A), determinations of net worth shall be—

"(i) made as of a day chosen by the corporation (but not more than 120 days before the termination date), and

"(ii) computed without regard to any liability under this section.

"(C)(i)(I) Each person whose liability is determined under this paragraph shall be liable to the corporation, for each of the liability payment years described in clause (ii), in an amount equal to 10 percent of the sum of the individual pretax profits of all persons who are liable under this section in connection with the plan termination, and who have a profit, for their respective fiscal years ending during such liability payment year.

"(II) Notwithstanding subclause (I), the liability to the corporation of any such person under this subparagraph for any liability payment year is satisfied upon receipt by the corporation of liability payments under this subparagraph for such liability payment year in connection with the same plan termination which equal, in the aggregate, such 10-percent amount.

"(ii) The liability payment years referred to in clause (i) are the 10 consecutive 1-year periods beginning with the earlier of—

"(I) the first 1-year period beginning 1 year after the end of the last plan year preceding the termination date in which any person liable under this section in connection with the plan termination earns a pretax profit, or

"(II) the fourth 1-year period beginning 1 year after the end of the last plan year preceding the termination date.

Notwithstanding the preceding provisions of this subparagraph, all liability of any person under this paragraph may be satisfied at any time by payment of any outstanding balance of the total amount of liability described in paragraph (1)(A)(ii) together with any accrued interest.

"(D)(i) The amount of liability referred to in subparagraph (A)(i) shall be due and payable as of the termination date.

"(ii) A person's liability for each annual liability payment referred to in subparagraph (A)(ii) for a liability payment year shall—

"(I) accrue as of the end of such year, and

"(II) be paid (with interest accrued from the end of such year) not later than 30 days after the latest date on which any such person files a Federal income tax return for a fiscal year ending during such liability payment year.

"(E) The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of the liability for which payments are required under subparagraph (A)(ii).

"(c)(1) For purposes of subsection (b)(2), the net worth of an employer shall be—

"(A) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

"(B) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11, United States Code, if the employer were the subject of a proceeding under such title.

"(2)(A) For purposes of subsections (b)(2), the term 'pretax profits' means—

"(i) except as provided in clause (ii), in the case of any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

"(ii) in the case of any fiscal year of an organization described in section 501(c) of the Internal Revenue Code of 1954, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles).

"(B) Such profits shall be calculated before provision for or deduction of—

"(i) Federal or other income tax,

"(ii) any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and

"(iii) any amounts required to be paid for such fiscal year under this section.

"(C) The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pretax profits.

"(d) If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of the employees of the employer who are participants under a plan established and maintained by the employer are separated from employment, the employer shall be treated with respect to that plan as if the employer were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4071 shall apply.".

(c) LIABILITY FOR FAILURE TO SATISFY FINAL BENEFIT OBLIGATIONS UNDER STANDARD TERMINATION.—Subtitle D of title IV (29 U.S.C. 1361 et seq.) is amended—

(1) by redesignating sections 4065 through 4068 (29 U.S.C. 1365 through 1368) as sections 4071 through 4074, respectively;

(2) by inserting after section 4064 (29 U.S.C. 1364) the following new section:

"LIABILITY FOR FAILURE TO SATISFY FINAL BENEFIT OBLIGATION UNDER STANDARD TERMINATION

"SEC. 4065. If a court of competent jurisdiction determines in a civil action after the final distribution of assets is completed pursuant to the closing out of a plan terminated in a standard termination under section 4041(b) that the plan has failed to discharge when due the final benefit obligations of the plan to any participant or beneficiary in accordance with section 4041(b)(3), and the final benefit obligations are not fully satisfied by the defendant in such action, any person who was (as of the termination date of such plan) a contributing sponsor of the plan or a member of such sponsor's controlled group shall be liable—

"(1) to the corporation for all final benefit obligations which the corporation guarantees under section 4022 in accordance with section 4041(b)(4), and

"(2) to each participant or beneficiary for any final benefit obligations which are not otherwise guaranteed by the corporation, discharged when due by the plan, or satisfied by the defendant in such action."; and

(3) by inserting after section 4065 (as added by clause (2)) the following: "Part 2—Administration and Enforcement".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) terminations with respect to which section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 993 of this Act); applies, and

(2) terminations under section 4042 of such Act with respect to which proceedings are instituted on or after the date of the enactment of this Act.

SEC. 997. LIABILITY TO PARTICIPANTS AND BENEFICIARIES UPON A DISTRESS TERMINATION OR TERMINATION BY THE CORPORATION.

(a) Each person who is, on the termination date of a single-employer plan terminated under section 4041(c) or 4042, a contributing sponsor of such plan or a member of such sponsor's controlled group shall, for any year following the date of termination in which such contributing sponsor or member of a control group earns a pretax profit, be liable to participants and beneficiaries of the terminated plan for that portion of their final benefit obligations (if any), which are not otherwise paid by the corporation for the plan. The liability of any contributing sponsor or member of a control group under this paragraph for any year shall not exceed 5 percent of such person's pretax profit. The liability of any person liable under this subsection shall run for the 10-year period described in 4062 (b)(2)(C)(ii).

(b) Any payment made in accordance with this section shall be treated as a contribution under section 404(a) of the Internal Revenue Code of 1954, as amended.

SEC. 998. EFFECT OF CORPORATE REORGANIZATION.

Subtitle D of title IV (as amended by section 996(c)(1) of this Act) is further amended by adding after section 4074 the following new section:

"EFFECT OF CORPORATE REORGANIZATION

"SEC. 4075. For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

"(1) If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

"(2) If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

"(3) If a person ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.".

SEC. 999. CONFORMING, CLARIFYING, TECHNICAL, AND MISCELLANEOUS AMENDMENTS.

(a) CONFORMING AMENDMENTS RELATING TO PLAN TERMINATIONS.—

(1) CREDITS TO PENSION BENEFIT GUARANTY FUNDS.—Section 4005(b)(1)(C) (29 U.S.C. 1305 (b)(1)(C)) is amended by inserting "terminated under section 4041(c) or" after "a plan".

(2) ESTIMATED BENEFITS FOR CERTAIN SINGLE-EMPLOYER PLANS.—Section 4005(b)(2) (29 U.S.C. 1305(b)(2)) is amended—

(A) by striking out "and" at the end of subparagraph (C);

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and"; and

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

"(E) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this title and the estimated amount of other benefits to which plan assets are allocated under section 4044, under single-employer plans which are unable to pay benefits when due or which are abandoned.".

(3) APPROVAL BY JOINT RESOLUTION OF RECOMMENDATIONS OF THE PENSION BENEFIT GUARANTY CORPORATION.—

(A) The last sentence of section 4006(a)(2) (29 U.S.C. 1306(a)(2)) is amended by striking out "the Congress approves such revised schedule by a concurrent resolution" and inserting in lieu thereof "a joint resolution approving such revised schedule is enacted".

(B) Section 4006 (a)(4) (29 U.S.C. 1306(a)(4)) is amended by striking out "approval by the Congress" and inserting in lieu thereof "the enactment of a joint resolution".

(C) Section 4006(b)(3) (29 U.S.C. 1306 (b)(3)) is amended (i) by striking out "concurrent" and inserting in lieu thereof "joint"; (ii) by striking out "That the Congress favors the" and inserting in lieu thereof "The"; and (iii) by inserting "is approved" after the blank space.

(D) Section 4022A(f)(2)(B) (29 U.S.C. 1322a(f)(2)(B)) is amended by striking out "Congress by concurrent resolution" and inserting in lieu thereof "enactment of a joint resolution".

(E) Section 4022A(f)(2)(C) (29 U.S.C. 1322a(f)(2)(C)) is amended by striking out "approved" and inserting in lieu thereof "enacted".

(F) Section 4022A(f)(3)(B) (29 U.S.C. 1322a(f)(3)(B)) is amended by striking out "Congress by a concurrent resolution" and inserting in lieu thereof "enactment of a joint resolution".

(G) The first sentence of section 4022A(f)(4)(A) (29 U.S.C. 1322a(f)(4)(A) is amended by striking out "concurrent" and inserting in lieu thereof "joint".

(H) Section 4022A(f)(4)(B) (29 U.S.C. 1322a(f)(4)(B)) is amended (i) by striking out "concurrent" each place it appears and inserting in lieu thereof "joint"; (ii) by striking out "That the Congress favors the" and inserting in lieu thereof "The"; and (iii) by inserting "is approved" after the blank space.

(I) Section 4022A(g)(4)(A)(ii) (29 U.S.C. 1322a(g)(4)(A)(ii)) is amended (i) by striking out "concurrent" and inserting in lieu thereof "joint"; and (ii) by striking out "adopted" and inserting in lieu thereof "enacted".

(J) Section 4022A(g)(4)(B) (29 U.S.C. 1322a(g)(4)(B)) is amended (i) by striking out "That the Congress disapproves the" and inserting in lieu thereof "The"; and (ii) by inserting "is disapproved" after the blank space.

(4) BENEFITS NOT GUARANTEED UNDER STANDARD TERMINATION.—Subsections (a) and (b) of section 4022 (29 U.S.C. 1322) are amended by inserting "under section 4041(c) or 4042" after "terminates" each place it appears.

(5) APPLICABILITY OF ASSET ALLOCATION RULES.—Section 4044 (29 U.S.C. 1344) is amended—

(A) by inserting "under section 4041(c) or 4042, or in the case of the closing out of a plan under section 4041(b)(3)" after "single employer defined benefit plan" in the matter preceding paragraph (1) of subsection (a);

(B) in the first sentence of subsection (c)—

(i) by striking out "the later of (1)",

(ii) by striking out "or (2)" and inserting in lieu thereof "and ending on", and

(iii) by inserting "under section 4041(c) or 4042" after "is terminated"; and

(C) by inserting "under section 4041(c) or 4042" after "is terminated" in the second sentence of subsection (c).

(6) TERMINATION DATE.—Section 4048(a) (29 U.S.C. 1348(a)) is amended—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2) (as redesignated) the following new paragraph:

"(1) in the case of a plan terminated in a standard termination in accordance with the provisions of section 4041(b), the date specified in the notice of intent to terminate,";

(C) in paragraph (2) (as redesignated)—

(i) by inserting "in a distress termination" after "terminated"; and

(ii) by striking out "section 4041" and inserting in lieu thereof "section 4041(c)"; and

(D) by striking out "in accordance with the provisions of either section" in paragraph (4) (as redesignated) and inserting in lieu thereof "under section 4041(c) or 4042".

(7) ADDITIONAL AMENDMENTS TO LIABILITY PROVISIONS.—

(A) Section 4063(c) (29 U.S.C. 1363(c)) is amended—

(i) by inserting "under section 4041(c) or 4042" after "terminated" in paragraph (2); and

(ii) by inserting "under section 4041(c) or 4042" after "terminates" in the matter preceding subparagraph (A) of paragraph (3).

(B) Section 4064(a) (29 U.S.C. 1364(a)) is amended by inserting "under section 4041(c) or 4042" after "terminated".

(C) Section 4073 (as redesignated by section 996(c)(1) of this Act) is amended—

(i) by inserting ", contributing sponsors, and members of such sponsors' controlled groups," after "employers"; and

(ii) by inserting "of amounts of liability to the corporation accruing as of the termination date" after "deferred payment".

(D)(i) Section 4074 (as redesignated by section 996(c)(1) of this Act) is amended—

(I) in subsection (a), (aa), by striking out "employers" the first place it appears and inserting in lieu thereof "person"; (bb) by striking out "neglect or refuse" and inserting in lieu thereof "neglects or refuses"; and (cc) by striking out "employer or employers" and inserting in lieu thereof "person";

(II) by striking out "employer" in subsection (d)(1) and inserting in lieu thereof "liable person";

(III) by striking out "employer" each place it appears in subsection (d)(2) and inserting in lieu thereof "liable person"; and

(IV) by striking out "employer or employers" in subsection (e) and inserting in lieu thereof "liable person".

(ii) Paragraph (1) of section 4074(c) (as redesignated by section 996(c)(1) of this Act) is amended to read as follows:

"(1)(A) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954 with respect to liens thereunder.

"(B) For purposes of this section, section 6323 of such Code shall be applied by substituting—

"(i) 'lien imposed by section 4074 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5),

"(ii) 'the Pension Benefit Guaranty Corporation' for 'the Secretary' in subsections (a) and (b)(9)(C),

"(iii) 'the payment of the amount on which the lien is based' for 'the collection of any tax under this title' in subsection (b)(3),

"(iv) 'the person whose property is subject to the lien' for 'the taxpayer' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i)),

"(v) 'such person' for 'the taxpayer' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii),

"(vi) 'payment of the loan value is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)' in subsection (b)(9)(C),

"(vii) 'section 4074 lien' for 'tax lien' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5),

"(viii) 'the date on which the lien is first filed' for 'the date of the assessment of the tax' in subsection (g)(3)(A), and

"(ix) 'if the lien arising under section 4075(a) of the Employee Retirement Income Security Act of 1974 is first filed before January 1, 1986, the first required refiling period shall be the calendar year 1991' for 'if the assessment of the tax was made before January 1, 1962, the first required filing period shall be the calendar year 1967' in subsection (g)(4).".

(b) ADDITIONAL AMENDMENTS.—

(1) Section 3 (29 U.S.C. 1002) is amended by adding at the end thereof the following new paragraph:

"(41) The term 'single-employer plan' means any pension plan which is not a multiemployer plan.".

(2) Part (4) of subtitle B of title I is amended by inserting after section 413 (29 U.S.C. 1113) the following new section:

"LIMITATION ON DEPARTMENT OF LABOR REGULATIONS

"SEC. 413A. (a)(1) Except as a defense, no regulation issued pursuant to the Department of Labor's proposed regulation defining 'plan assets' for purposes of this Act (50 Fed. Reg. 961, January 8, 1985, as modified by 50 Fed. Reg 6361, February 15, 1985) shall apply to any assets of a real estate entity in which a plan subject to this Act invests if—

"(A) interests in the entity are first offered to plans subject to this Act on or before a date 120 days after the date of the Department of Labor's publication of such final regulation;

"(B) no plan acquires an interest in the entity at any time on or after a date 270 days after the date of publication of such final regulation (except pursuant to a contract binding on the plan entered into before the expiration of such 270-day period); and

"(C) every interest in the entity acquired by a plan before the expiration of such 270-day period is a security which is held by 100 or more persons, freely transferable and part of a class of securities that is registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) (or a class of securities that is registered under the Securities Act of 1933 and which subsequently is registered under the Securities and Exchange Act of 1934 as soon as practicable after the issuance of such securities).

"(2) No asset of any entity described in paragraph (1) shall be treated as an asset of any plan for any purpose under this Act if the assets of such entity would not have been assets of such plan under the provisions of Interpretive Bulletin 75-2 (29 C.F.R. §2509.75-2) or under the provisions of the regulations proposed by the Department of Labor and published—

"(A) on August 28, 1979, at 44 Fed. Reg. 50363,

"(B) on June 6, 1980, at 45 Fed. Reg. 38084,

"(C) on January 8, 1985, at 50 Fed. Reg. 961, or

"(D) on February 15, 1985, at 50 Fed. Reg. 6361,

without regard to any limitation of any effective date proposed therein.

"(b) For purposes of this section—

"(1) The term 'real estate entity' means an entity which is—

"(A) registered with the Securities and Exchange Commission;

"(B) is owned by more than 100 investors, and;

"(C) at least 75 percent of the value of net assets available for investment consists of direct or indirect ownership of 'real estate assets' or 'interests in real property' at any time within two years of the closing of its offering period.

"(2) The term 'real estate assets' means—

"(A) real property (including interests in real property and interests in mortgages on real property); or

"(B) shares (or transferable certificates of beneficial interest) in other real estate entities.

"(3) The term 'interests in real property' includes—

"(A) direct or indirect fee ownership and co-ownership and mortgages of land or improvements thereon;

"(B) leaseholds of land or improvements thereon;

"(C) options to acquire land or improvements thereon; and

"(D) options to acquire leaseholds of land or improvements thereon,

but it does not include mineral, oil, and gas royalty interests.

"(c) Nothing in this section shall limit the authority of the Department of Labor to issue regulations or otherwise interpret section 3(21) of this Act.".

(3) Section 105 (29 U.S.C. 1025) is amended by adding at the end thereof the following new subsection:

"(e) In the case of a standard termination of a single employer defined benefit plan, at the same time as the plan administrator notifies any participant or beneficiary of the benefits to which such participant or beneficiary is entitled upon such termination, the plan administrator shall notify the participant or beneficiary of the information that was used in computing the amount of such benefits, including—

"(1) the length of service,

"(2) the age of the participant or beneficiary,

"(3) wages, and

"(4) such other information as the corporation may require.".

(4) The first sentence of section 4003(f) (29 U.S.C. 1303(f)) is amended by striking out "employee" and inserting in lieu thereof "employer".

(5) Section 4005 (29 U.S.C. 1305) is amended by adding at the end thereof the following new subsection:

"(g) Any stock issued by a person liable to the corporation under this title which is paid to the corporation by such person in satisfaction of such person's liability under this title may be voted only by the corporation's custodial trustees or outside money managers.".

(6) The second sentence of section 4022(b)(7) (29 U.S.C. 1322(b)(7)) is amended by striking out "following" and inserting in lieu thereof "beginning with".

(7) Section 4042(d)(3) (29 U.S.C. 1342(d)(3)) is amended by striking out "same duties as a trustee appointed under section 47 of the Bankruptcy Act" and inserting in lieu thereof "same duties as those of a trustee under section 704 of title 11, United States Code".

(8) Section 4044(a)(4) (29 U.S.C. 1344(a)(4)) is amended—

(A) by striking out "section 4022(b)(5)" in subparagraph (A) and inserting in lieu thereof "section 4022B(a)"; and

(B) by striking out "section 4022(b)(6)" in subparagraph (B) and inserting in lieu thereof "section 4022(b)(5)".

(9) Paragraph (2) of section 4074(c) (as redesignated by section 996(c)(1) of this Act) is amended to read as follows:

"(2)(A)(i) In any case subject to title 11, United States Code, any lien imposed under this section and perfected shall be treated as securing an allowed claim under section 506 of such title, subject only to the limitations imposed by section 6323 of the Internal Revenue Code of 1954.

"(ii) The lien and perfection of the lien shall be treated as a fixing of a statutory lien that is not avoidable under section 545 of title 11, United States Code.

"(B) Any claim for the amount of liability under sections 4062, 4063, or 4064 (including interest) for which a lien has not been perfected shall be treated in the same manner as a claim for a tax on income having priority under section 503(b)(1)(B) or section 507(a)(7) of title 11, United States Code.

"(C) For purposes of section 3713 of title 31, United States Code—

"(i) any claim for the amount of liability under sections 4062, 4063, or 4064 (including interest) shall be treated in the same manner as a claim of the United States, and;

"(ii) any lien imposed under this section shall be treated in the same manner as a lien securing a claim of the United States.".

(10) Section 4074(e) (as redesignated by section 996(c)(1) of this Act) is amended by striking out ", with the consent of the board of directors,".

SEC. 999A. AMENDMENTS TO THE TABLE OF CONTENTS OF ERISA.

The table of contents in the first section is amended—

(1) by inserting after the item relating to section 413 the following new item:

"Sec. 413A. Limitation on Department of Labor regulations.";

(2) by striking out the item relating to section 4004 and inserting in lieu thereof the following new item:

"Sec. 4004. Appointment of receivers by the corporation.";

and

(3) by striking out the items relating to subtitle D of title IV and inserting in lieu thereof the following new items:

"Subtitle D—Obligations of the Corporation; Liability of Employers and Other Persons

"PART 1—OBLIGATIONS OF THE CORPORATION; PRIMARY LIABILITY FOR SINGLE-EMPLOYER PLAN TERMINATION

"Sec. 4061. Amount payable by the corporation.

"Sec. 4062. Liability to the corporation for termination of single-employer plans under a distress termination or a termination by the corporation.

"Sec. 4063. Liability of substantial employer for withdrawal.

"Sec. 4064. Liability of employers on termination of plan maintained by more than one employer.

"Sec. 4065. Liability for failure to satisfy final benefit obligation under standard termination.

"PART 2—ADMINISTRATION AND ENFORCEMENT

"Sec. 4071. Annual report of plan administrator.

"Sec. 4072. Annual notification to substantial employers.

"Sec. 4073. Recovery of employer liability for plan termination.

"Sec. 4074. Lien for liability of employer.

"Sec. 4075 Effect of corporate reorganization.".

SEC. 999B. EFFECTIVE DATE.

Except as otherwise provided in this title, this part and the amendments made by this part shall become effective on the date of the enactment of this Act.

SEC. 999C. STUDIES.

(a)(1) As soon as practicable after the date of enactment of this Act, the Secretary of Labor shall conduct a study of terminations to which section 4044(d) applies.

(2) No later than February 1, 1986, the Secretary shall submit a report on the study conducted under paragraph (1), together with any recommendations for statutory changes, to the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Finance of the Senate.

(b)(1) As soon as practicable after the date of enactment of this Act, the Pension Benefit Guaranty Corporation shall conduct a study on the purchase of insurance contracts from an insurer in satisfaction of all final benefit obligations under title IV.

(2) No later than one year after the date of enactment of this Act, the Pension Benefit Guaranty Corporation shall submit a report on the study conducted under paragraph (1) to the chairman of the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Finance of the Senate.

TITLE X—COMMITTEE ON SMALL BUSINESS

TABLE OF SECTIONS

Sec. 1001. Small Business Administration program levels.
Sec. 1002. Business lending reforms.
Sec. 1003. Guarantee fee.
Sec. 1004. Program guarantee authority.
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Sec. 1006. Federal Financing Bank purchase of guaranteed obligations.
Sec. 1007. Surety guarantees.
Sec. 1008. Eligibility of small businesses owned by Indian tribes.
Sec. 1009. Size standard for agricultural enterprises.
Sec. 1010. Formation of Veterans Business Resource Councils.

SMALL BUSINESS ADMINISTRATION PROGRAM LEVELS

SEC. 1001. Section 20 of the Small Business Act is amended—

(1) by adding at the end thereof the following new subsections:

"(u) The following program levels are authorized for fiscal year 1986:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sums, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era, as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

"(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $2,930,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $15,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees and debentures as provided in section 503.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $250,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,115,000,000.

"(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $150,000,000.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

"(v) There are authorized to be appropriated to the Administration for fiscal year 1986, $534,000,000. Of such sum $312,000,000 shall be available for carrying out the programs referred to in subsection (u), paragraphs (1) through (3); $12,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $210,000,000 shall be available for salaries and expenses of the Administration.

"(w) The following program levels are authorized for fiscal year 1987:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era, as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

"(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,050,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $16,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $261,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,164,000,000.

"(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $157,000,000.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

"(x) There are authorized to be appropriated to the Administration for fiscal year 1987, $561,000,000. Of such sum $331,000,000 shall be available for carrying out the programs referred to in subsection (w), paragraphs (1) through (3); $16,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $214,000,000 shall be available for salaries and expenses of the Administration.

"(y) The following program levels are authorized for fiscal year 1988:

"(1) For the programs authorized in section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era, as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

"(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,169,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $6,000,000 in loans as provided in paragraph (10), $65,000,000 in loans as provided in paragraph (11), $16,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $272,000,000 in guarantees of debentures.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,213,000,000.

"(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $163,000,000.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

"(z) There are authorized to be appropriated to the Administration for fiscal year 1988, $566,000,000. Of such sum $333,000,000 shall be available for carrying out the programs referred to in subsection (y), paragraphs (1) through (3); $15,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $218,000,000 shall be available for salaries and expenses of the Administration.";

(2) in subsection (t), as added by section 302 of Public Law 98-270—

(A) by inserting "(1)" after "(t)";

(B) by striking out "each of fiscal years 1985 and 1986," and inserting in lieu thereof "fiscal year 1985"; and

(C) by striking out "for each of such years"; and

(3) in subsection (t), as added by section 3 of Public Law 98-395—

(A) by striking out "(1)", "(2)", and "(3)" and inserting in lieu thereof "(A)", "(B)", and "(C)", respectively; and

(B) by striking out "(t)" and inserting in lieu thereof "(2)".

BUSINESS LENDING REFORMS

SEC. 1002. Section 7(a) of the Small Business Act is amended by striking out "90" each place it appears and inserting in lieu thereof "80".

GUARANTEE FEE

SEC. 1003. Section 7(a) of the Small Business Act is amended by adding at the end thereof the following:

"(16) The Administration shall collect a guarantee fee equal to 2 per centum of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less or a loan under paragraph (13). The fee shall be payable by the participating lending institution and may be charged to the borrower.".

PROGRAM GUARANTEE AUTHORITY

SEC. 1004. Section 20(a) of the Small Business Act is amended—

(1) by inserting "(1)" after "SEC. 20. (a)"; and

(2) by adding at the end thereof the following:

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to (A) the availability of qualified applications for such guarantees, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limits its authority to enter into commitments for such guarantees to qualified applicants.".

DISASTER LENDING REFORMS

SEC. 1005. (a) Section 7(b) of the Small Business Act is amended—

(1) by striking out "The" after "(b)" and inserting in lieu thereof "Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the";

(2) by striking out the semicolon at the end of paragraph (2) and inserting in lieu thereof a period; and

(3) by striking out paragraphs (3) and (4).

(b) Section 7(c)(4) of such Act is amended by striking out the last two sentences.

(c) Section 18(a) of such Act is amended by striking out all that follows "Federal Government" and inserting in lieu thereof a period.

FEDERAL FINANCING BANK PURCHASE OF GUARANTEED OBLIGATIONS

SEC. 1006. (a) Title III of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"GUARANTEED OBLIGATIONS NOT ELIGIBLE FOR PURCHASE BY FEDERAL FINANCING BANK

"SEC. 320. Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

"(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this title,

"(2) any obligation which is an interest in any obligation described in paragraph (1), or

"(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).".

(b) The table of sections for such title III is amended by adding at the end thereof the following new item:

"Sec. 320. Guaranteed obligations not eligible for purchase by Federal Financing Bank.".

SURETY GUARANTEES

SEC. 1007. (a) Section 411(a) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)) is amended by striking out "$1,000,000" and inserting in lieu thereof "$1,500,000".

(b) Section 411(e)(2) of such Act is amended by striking out "$1,000,000" and inserting in lieu thereof "$1,500,000".

ELIGIBILITY OF SMALL BUSINESSES OWNED BY INDIAN TRIBES

SEC. 1008. (a) Section 8(a)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(2)(C)) is amended by inserting "Indian tribes," after "Native Americans,".

(b) Paragraph (4) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended to read as follows:

"(4)(A) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern which meets the requirements of subparagraph (B) and—

"(i) which is at least 51 per centum owned by—

"(I) one or more socially and economically disadvantaged individuals, or

"(II) an economically disadvantaged Indian tribe, or

"(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by—

"(I) one or more socially and economically disadvantaged individuals, or

"(II) an economically disadvantaged Indian tribe.

"(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

"(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I), or

"(ii) members of the economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II).".

(c) Paragraph (6) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end thereof the following new sentence: "In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.".

(d) Subsection (a) of section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end thereof the following new paragraph:

"(13) For purposes of this subsection, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

"(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

"(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.".

SIZE STANDARD FOR AGRICULTURAL ENTERPRISES

SEC. 1009. Not later than ten days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue a regulation setting the annual receipts size standard under section 3(a) of the Small Business Act for agricultural enterprises, as defined in section 18(b) of such Act (other than beef cattle feedlot operators and chicken egg producers), at $500,000. The standard established under the preceding sentence shall be deemed to have taken effect on June 21, 1985.

FORMATION OF VETERANS BUSINESS RESOURCE COUNCILS

SEC. 1010. (a) The Congress finds that—

(1) Veterans Business Resource Councils have been established in the following ten States: California, Ohio, Texas, New York, Massachusetts, Indiana, Louisiana, Maryland, Minnesota, and Missouri;

(2) the concept of Veterans Business Resource Councils to establish networks of veterans with business experience assisting fellow veterans seeking to establish small businesses merits serious consideration; and

(3) the majority of our Nation's Vietnam era veterans fall within the thirty-five to forty-five-year old age range, in which most people decide to enter into small business ownership.

(b) Therefore, the Congress urges the Small Business Administration—

(1) to evaluate the effectiveness of the Veterans Business Resource Councils which are currently operating and to recommend improvements in their operations;

(2) to develop guidelines to assist in the establishment of Veterans Business Resource Councils; and

(3) to work with the remaining States and any interested organizations to encourage the establishment of Veterans Business Resource Councils in those States.

TITLE XI—COMMITTEE ON VETERANS' AFFAIRS

PART A—ENTITLEMENTS AND ELIGIBILITIES FOR HEALTH CARE FROM THE VETERANS' ADMINISTRATION

ENTITLEMENT AND ELIGIBILITY FOR HOSPITAL CARE

SEC. 1101. Section 610(a) is amended by striking out "(a)" and all that follows through "care;" at the end of clause (1)(B) and inserting in lieu thereof the following:

"(a)(1)(A)(i) Except as provided in division (ii) of this subparagraph, the Administrator, through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title, shall furnish such hospital care as the Administrator determines to be reasonably necessary for—

"(I) a veteran for a disability rated as service connected; and

"(II) any disability of a veteran who has a service-connected disability rated at 50 percent or more.

"(ii) In the case of a veteran who is under incarceration, the Administrator (I) may decide not to furnish care under division (i) of this subparagraph in a Veterans' Administration facility if the Administrator determines that to do so would not be feasible in terms of the security necessary in connection with the custody of the veteran or the safety of other individuals receiving care in such facility, and (II) may furnish care under such division in a non-Veterans' Administration facility (as authorized in section 603 of this title).

"(B) The Administrator, through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title, may furnish such hospital care as the Ad-

ministrator determines to be reasonably necessary for—

"(i)(I) a non-service-connected disability of a veteran who has a service-connected disability rated at less than 50 percent;

"(II) a veteran who, but for the receipt of retired pay, would be entitled to disability compensation;

"(III) a veteran who is entitled to disability compensation pursuant to section 351 of this title or, but for a suspension pursuant to such section, would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is not limited in the judgment or settlement described in such section; and

"(IV) a veteran whose discharge or release from active military, naval, or air service was for a disability incurred or aggravated in line of duty;

"(ii) a veteran who is a former prisoner of war;

"(iii) a veteran exposed to a toxic substance or radiation, as provided in subsection (e) of this section;

"(iv) a veteran of the Spanish-American War, Mexican border period, or World War I; and

"(v) a non-service-connected disability of a veteran who is unable to defray the expenses of necessary care.

"(C) The Administrator, through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title, may (to the extent facilities and resources are otherwise available and subject to subparagraph (D) of this paragraph) furnish such hospital care as the Administrator determines to be reasonably necessary for a non-service-connected disability of a veteran who agrees to make payment to the United States under section 612B of this title in connection with such care.

"(D) The Administrator may prescribe regulations under which a veteran having an annual income above an amount specified in such regulations, or an estate with a corpus above an amount specified in such regulations, would not be eligible for care under subparagraph (C) of this paragraph. For the purpose of this subparagraph, the Administrator shall determine annual income in accordance with section 503 of this title and shall count as income of the veteran any income of a veteran's family member that would be taken into account under section 521(c) of this title.".

ENTITLEMENT AND ELIGIBILITY FOR NURSING HOME CARE

SEC. 1102. Section 610(a) is further amended by striking out "(2)" and all that follows and inserting in lieu thereof the following:

"(2)(A) The Administrator, through Veterans' Administration facilities or as provided in section 620 of this title, shall furnish such nursing home care as the Administrator determines to be reasonably necessary to a veteran for a service-connected disability.

"(B) The Administrator, through Veterans' Administration facilities or as provided in section 620 of this title, may furnish such nursing home care as the Administrator determines to be reasonably necessary to any veteran eligible for hospital care under subparagraphs (A) and (B) of paragraph (1) of this subsection for any disability other than a service-connected disability.

"(C) The Administrator, through Veterans' Administration facilities or as provided in section 620 of this title, may (to the extent facilities and resources are otherwise available and subject to subparagraph (D) of this paragraph) furnish such nursing home care as the Administrator determines to be reasonably necessary for a veteran eligible for hospital care under subparagraph (C) of paragraph (1) of this subsection who agrees to make payment to the United States under section 612B of this title in connection with such care.

"(D) The Administrator may prescribe regulations under which a veteran having an annual income above an amount specified in such regulations, or an estate with a corpus above an amount specified in such regulations, would not be eligible for care under subparagraph (C) of this paragraph. For the purpose of this subparagraph, the Administrator shall determine annual income in accordance with section 503 of this title and shall count as income of the veteran any income of a veteran's family member that would be taken into account under section 521(c) of this title.".

ELIGIBILITY FOR DOMICILIARY CARE

SEC. 1103. Section 610(b) is amended to read as follows:

"(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines to be reasonably necessary to a veteran who is in need of domiciliary care if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that such veteran is incapacitated from earning a living and has no adequate means of support.".

ENTITLEMENT AND ELIGIBILITY FOR AMBULATORY OR OUTPATIENT MEDICAL SERVICES

SEC. 1104. (a) Section 612 is amended—

(1) in subsection (a)—

(A) by amending the first sentence to read as follows:

"(1) Except as provided in paragraph (2) of this subsection and in subsection (b) of this section, the Administrator, through Veterans' Administration facilities or through private facilities to the extent authorized by section 603 of this title, shall furnish such medical services as the Administrator determines to be reasonably necessary (A) to any veteran for a service-connected disability (including a disability that was incurred or aggravated in line of duty and for which the veteran was discharged or released from the active military, naval, or air service), and (B) for any disability of a veteran who has a service-connected disability rated at 50 percent or more.";

(B) in the second sentence by striking out "may" and inserting in lieu thereof a comma and "as part of medical services furnished under the preceding sentence, shall";

(C) by striking out the third sentence; and

(D) by inserting at the end the following new paragraph:

"(2) In the case of a veteran who is under incarceration, the Administrator (A) may decide not to furnish services under the first sentence of paragraph (1) of this subsection in a Veterans' Administration facility if the Administrator determines that to do so would not be feasible in terms of the security necessary in connection with the custody of the veteran or the safety of other individuals receiving care in such facility, and (B) may furnish services under such sentence in a non-Veterans' Administration facility (as authorized in section 603 of this title).";

(2) in subsection (f)—

(A) in the first sentence—

(i) by striking out "within the limits of Veterans' Administration facilities" and inserting in lieu thereof "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title";

(ii) by inserting "and" after the semicolon at the end of clause (1);

(iii) by striking out clause (2); and

(iv) by redesignating clause (3) as clause (2);

(B) in the second sentence by striking out "also" and inserting in lieu thereof "as part of medical services furnished under the preceding sentence"; and

(C) in the third sentence by inserting a comma and "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title," after "may";

(3) in subsection (g) by striking out "within the limits of Veterans' Administration facilities" and inserting in lieu thereof "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title"; and

(4) by striking out subsection (i) and redesignating subsection (j) as subsection (i).

(b) Section 612A is amended—

(1) in subsections (a) and (b)(1) by striking out "within the limits of Veterans' Administration facilities" and inserting in lieu thereof "through Veterans' Administration facilities"; and

(2) in subsection (e)(1) by striking out "sections 612(f)(2) and 601(4)(C)(ii)" and inserting in lieu thereof "sections 612(a)(1)(B) and 603(2)(A)".

PAYMENTS BY CERTAIN VETERANS FOR, AND PRIORITIES IN THE FURNISHING OF, HOSPITAL AND NURSING HOME CARE AND MEDICAL SERVICES

SEC. 1105. (a) Subchapter II of chapter 17 is amended by inserting the following new sections:

"§ 612B. Payment in connection with hospital and nursing home care and medical services

"(a)(1) A veteran who is eligible for care or services under section 610 or 612(f)(1) of this title because of section 610(a)(1)(C) or (2)(C) of this title may not under this subchapter be furnished hospital care, nursing home care (including such care under section 620 of this title), or medical services on an outpatient or ambulatory basis unless the veteran agrees to pay to the United States—

"(A) in the case of each episode of hospital care or nursing home care, for each 60 days of care, an amount equal to the lesser of—

"(i) an amount equal to the amount of the inpatient hospital deductible in effect under section 1813 of the Social Security Act (42 U.S.C. 1395e(b)) at the time such care is furnished; or

"(ii) the cost of furnishing such care, as determined by the Administrator; and

"(B) in the case of each visit in which medical services are furnished on an outpatient or ambulatory basis under section 612(f) of this title, an amount equal to the percentage referred to in paragraph (2) of this subsection of the estimated average cost of an outpatient visit in a Veterans' Administration facility during the fiscal year in which the services are furnished, as determined by the Administrator pursuant to regulations which the Administrator shall prescribe.

"(2) The percentage described in paragraph (1)(B) of this subsection is the percentage of reasonable charges not paid from the Federal Supplementary Medical Insurance Trust Fund pursuant to section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), not taking into account the provisions of the subclauses of such section 1833(a)(1) (42 U.S.C. 1395l(a)(1)).

"(3) In any case in which the Administrator determines, pursuant to regulations which the Administrator shall prescribe, that it is not feasible to request a veteran (or other individual authorized to act on the veteran's behalf) for the veteran's (or such other individual's) agreement pursuant to paragraph (1) of this subsection prior to commencing the furnishing of care or services to the veteran, an obligation to make

payments pursuant to such paragraph shall nevertheless be incurred.

"(b) Any moneys collected or received by the Veterans' Administration under this section shall be deposited in the Treasury as miscellaneous receipts.

"(c) For the purpose of subsection (a) of this section:

"(1) The term 'episode of hospital or nursing home care' with respect to a veteran means a period of consecutive days—

"(A) beginning with the first day (not included in a prior episode of such care) on which such veteran is furnished hospital or nursing home care under this subchapter, and

"(B) ending with the close of the first period of 60 consecutive days thereafter on each of which such veteran is not being furnished either hospital care or nursing home care under this subchapter.

"(2) The term '60 days of care' means (A) in the case of a veteran who during an episode of hospital or nursing home care is furnished 60 days or less of care, up to 60 days of hospital or nursing home care (or of any combination thereof), or (B) in the case of a veteran who during an episode of hospital or nursing home care is furnished care for a number of days greater than 60, each period of hospital or nursing home care (or of any combination thereof) of 60 days and, if such number of days is not evenly divisible by 60, the remaining period of care that is less than 60 days.

"§ 612C. Priorities in furnishing hospital, nursing home, and domiciliary care and medical services

"(a) The Administrator shall prescribe regulations to ensure that, except in cases involving medical emergencies which pose a serious threat to life or health, priority in furnishing hospital or domiciliary care or medical services under this chapter shall be accorded to veterans in the following order:

"(1) To a veteran for a service-connected disability.

"(2) To a veteran with a service-connected disability rated at 50 percent or more.

"(3) To a veteran who has a service-connected disability rated at less than 50 percent and as compensable in degree (including any veteran being examined to determine the existence or rating of a service-connected disability, for the purposes of such examination).

"(4) To a veteran who, but for the receipt of retirement pay, would be entitled to disability compensation.

"(5) To a veteran who is entitled to disability compensation pursuant to section 351 of this title, or, but for a suspension pursuant to such section, would be entitled to disability compensation, but only if such veteran's continuing eligibility for such care is not limited under a judgment or settlement described in such section.

"(6) To a veteran (A) whose discharge or release from active military, naval, or air service was for a disability incurred or aggravated in line of duty, or (B) with a disability which is service-connected but not compensable in degree.

"(7) To a veteran (A) who is a former prisoner of war, or (B) who, as a result of exposure to a toxic substance or radiation is eligible for care under section 610(a)(1)(B)(iii) of this title, for care as specified in section 610(e) of this title.

"(8) To a veteran of the Spanish-American War, the Mexican border period, or World War I, or who is otherwise being furnished services under section 612(g) of this title.

"(9) To a veteran in receipt of pension under chapter 15 of this title.

"(10) To a veteran who is unable to defray the expenses of necessary care.

"(11) To a veteran being furnished care or services because of section 610(a)(1)(C) or (2)(C) of this title and who is 65 years of age or older.

"(b)(1) The Administrator shall prescribe regulations to ensure that priority in furnishing nursing home care under this chapter shall be accorded in the order set forth in paragraph (2) of this subsection and, within each of the categories specified in such paragraph, in the order specified in subsection (a) of this section.

"(2) The priority order referred to in paragraph (1) of this subsection is as follows:

"(A) Care for a veteran in need of a level or type of nursing home care that (i) is not readily available in a nursing home care facility for which the Administrator may contract under section 620 of this title and which is located in a geographic area where it is reasonable, as determined by the Administrator, for the veteran to be furnished such care, and (ii) is available in a nursing home care facility under the jurisdiction of the Administrator.

"(B) Care for a veteran in need of a level or type of nursing home care that is readily available in such a contract facility in such geographic area.

"(c) The Administrator shall ensure that no guideline, regulation, or other issuance of the Veterans' Administration has the effect of encouraging, directly or indirectly, the furnishing of care or services to a veteran eligible because of section 610(a)(1)(C) or (2)(C) of this title in any fashion not fully consistent with the priorities established by this section.".

(b) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 612A the following new items:

"612B. Payment in connection with hospital and nursing home care and medical services.
"612C. Priorities in furnishing hospital, nursing home, and domiciliary care and medical services.".

DETERMINATION OF A VETERAN'S INABILITY TO DEFRAY NECESSARY EXPENSES

SEC. 1106. Section 622 is amended—

(1) by inserting "(a)" before "For the purposes";

(2) by striking out "610(a)(1)(B)" and inserting in lieu thereof "610(a)(1)(B)(v)";

(3) by striking out "610(b)(2),"; and

(4) by adding at the end the following new subsection:

"(b)(1)(A) Subject to subparagraph (B) of this paragraph and except as provided in paragraph (3) of this subsection, a veteran who does not meet one of the eligibility criteria referred to in subsection (a) shall be determined by the Administrator to be unable to defray necessary expenses for the purpose of the sections of this title referred to in such subsection if the veteran's income (as determined under paragraph (2) of this subsection) during the calendar year preceding the date of the veteran's application for care is not greater than $25,000 (or the applicable greater amount calculated under subparagraph (B) of this paragraph).

"(B)(i) Whenever, after December 1, 1985, maximum annual rates of pension are increased under section 3112(a) of this title, the Administrator shall, effective on the date that the increase in such rates of pension takes effect, increase the dollar amount specified in subparagraph (A) of this paragraph as such amount was in effect immediately prior to the effective date of such increase in such rates of pension, by the same percentage as the percentage by which such rates of pension are increased.

"(ii) In order to avoid hardship, the Administrator, pursuant to regulations which the Administrator shall prescribe, may, in any fiscal year, increase for a specified geographic area the income level established pursuant to subparagraph (A) of this paragraph.

"(2) For the purpose of this subsection, the Administrator shall determine a veteran's income in accordance with section 503 of this title and shall count as income of the veteran any income of a veteran's family member that would be taken into account under section 521(c) of this title.

"(3)(A) The Administrator shall not make a determination that a veteran is unable to defray necessary medical expenses for the purpose of the sections of this title referred to in subsection (a) of this section if the corpus of the estate of the veteran (and of the veteran's spouse and dependent children, if any) is such that, under all the circumstances (including consideration of the annual income of the veteran and of such spouse and dependent children), the Administrator finds it is unreasonable to make such determination.

"(B) In evaluating the corpus of a veteran's estate for the purpose of this paragraph, the Administrator shall consider the same items to be part of the corpus of the veteran's estate as would be so considered under section 522 of this title.".

CONTRACT HOSPITAL CARE AND MEDICAL SERVICES

SEC. 1107. (a) Section 601 is amended—

(1) in paragraph (4)—

(A) in clause (A), by inserting "and" after the semicolon; and

(B) by striking out the semicolon in clause (B) and all that follows through the end of such paragraph and inserting in lieu thereof a period; and

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

"(9) The term 'non-Veterans' Administration facilities' means facilities other than Veterans' Administration facilities.".

(b)(1) Subchapter I of chapter 17 is amended by adding at the end the following new section:

"§ 603. Contract hospital care and medical services

"When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or of furnishing the care or services required, a requirement or an authority in section 610 or 612 of this title to furnish care or services includes a requirement or authority, as the case may be, to contract with non-Veterans' Administration facilities for the furnishing of hospital care or medical services in order to provide—

"(1) hospital care or medical services to a veteran for the treatment of a service-connected disability or a disability for which a veteran was discharged or released from the active military, naval, or air service;

"(2) medical services for the treatment of any disability of (A) a veteran described in section 612(a)(1)(B) of this title, (B) a veteran described in clause (1)(B) of the first sentence, or in the third sentence (but only to the extent authorized therein), of section 612(f) of this title, or (C) a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities;

"(3) hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a

veteran receiving medical services in a Veterans' Administration facility until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility;

"(4) hospital care for women veterans;

"(5) hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State not contiguous to the forty-eight contiguous States, except that the annually determined hospital patient load and incidence of the provision of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and private facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by the Veterans' Administration within the forty-eight contiguous States, but the authority of the Administrator under this subclause (except with respect to Alaska and Hawaii) shall expire on October 31, 1985, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico and to the Virgin Islands of the restrictions in this subclause with respect to hospital patient loads and incidence of provision of medical services; or

"(6) diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, the provision of medical services at independent Veterans' Administration outpatient clinics to obviate the need for hospital admission.

In the case of any veteran for whom the Administrator contracts to provide care or services in a private facility pursuant to a provision of this section, the Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 602 the following new item:

"603. Contract hospital care and medical services.".

IMPLEMENTATION REPORT

SEC. 1108. Not later than December 1, 1985, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on procedures that the Administrator has established for implementation of section 612B of title 38, United States Code, as added by section 1105(a) of this Act. Such report shall contain information with respect to the guidelines and processes for (1) implementation of income criteria established by and under the amendments made by this Part for Veterans' Administration health-care eligibility, and (2) for the collection of payments required by the amendments made by this Part.

EFFECTIVE DATE

SEC. 1109. (a) Except as provided in subsection (b), the amendments made by this part shall apply to hospital care, nursing home care, domiciliary care, and medical services furnished on or after November 1, 1985.

(b)(1) The provisions of sections 610 and 622 of title 38, United States Code, as in effect on the day before the date of the enactment of this Act, shall apply with respect to hospital and nursing home care furnished on or after November 1, 1985, to veterans who were furnished such care on October 31, 1985, but only to the extent that such care is furnished with respect to the same period of care for which it was furnished on October 31, 1985, as determined by the Administrator pursuant to regulations which the Administrator shall prescribe.

(2) During the month of November 1985, the Administrator may, in order to continue a course of treatment begun prior to November 1, 1985, furnish medical services to a veteran on an ambulatory or outpatient basis without regard to the amendments made by this Part.

(3) For the purpose of this subsection—

(A) the term "period of care' means a period of consecutive days—

(i) beginning with the first day on which a veteran is furnished hospital or nursing home care, and

(ii) ending with the veteran's discharge from the hospital or nursing home facility, as the case may be;

(B) the terms "hospital care", "medical services", and "domiciliary care" have the meanings given those terms in paragraphs (5), (6), and (8), respectively, of section 601 of title 38, United States Code; and

(C) the terms "veteran" and "nursing home care" have the meanings given those terms in paragraphs (2) and (28), respectively, of section 101 of such title.

PART B—RECOVERY OF THE COST OF CERTAIN HEALTH CARE AND SERVICES FURNISHED BY THE VETERANS' ADMINISTRATION

SEC. 1111. (a) Section 629 of title 38, United States Code, is amended to read as follows:

"§ 629. Recovery by the United States of the cost of certain care and services

"(a)(1) Subject to the provisions of this section, in any case in which a veteran is furnished care or services under this chapter for a non-service-connected disability described in paragraph (2) of this subsection, the United States has the right to recover or collect the reasonable cost of such care or services (as determined by the Administrator) from a third party to the extent that the veteran (or the provider of the care or services) would be entitled to receive payment for such care or services from such third party if the care or services had not been furnished by a department or agency of the United States.

"(2) Paragraph (1) of this subsection applies to a non-service-connected disability—

"(A) that is incurred incident to the veteran's employment and that is covered under a workers' compensation law or plan that provides for payment for the cost of health care and services provided to the veteran by reason of the disability;

"(B) that is incurred as the result of a motor vehicle accident to which applies a State law that requires the owners or operators of motor vehicles registered in that State to have in force automobile accident reparations insurance;

"(C) that is incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime; or

"(D) that is incurred by a veteran who does not have a service-connected disability and who is entitled to care (or payment of the expenses of care) under a health-plan contract.

"(3) In the case of a health-plan contract that contains a requirement for a deductible or copayment by the veteran—

"(A) the veteran's not having paid such deductible or copayment with respect to care or services furnished under this chapter shall not preclude recovery or collection under this section; and

"(B) the amount that the United States may collect or recover under this section shall be reduced by the appropriate deductible or copayment amount, or both.

"(b)(1) The United States shall, as to the right provided in subsection (a) of this section, be subrogated to any right or claim that the veteran (or the veteran's personal representative, successor, dependents, or survivors) may have against a third party.

"(2)(A) In order to enforce any right or claim to which the United States is subrogated under paragraph (1) of this subsection, the United States may intervene or join in any action or proceeding brought by the veteran (or the veteran's personal representative, successor, dependents, or survivors) against a third party.

"(B) If—

"(i) no such action or proceeding is begun within 180 days after the first day on which care or services for which recovery is sought were furnished to the veteran by the Administrator under this chapter, and

"(ii) the United States has sent written notice by certified mail to the veteran at the veteran's last-known address (or to the veteran's personal representative or successor) of the intention of the United States to institute legal proceedings,

the United States may, after 60 days have lapsed from the mailing of such notice, institute and prosecute legal proceedings against the third party.

"(c)(1) The Administrator may compromise, settle, or waive any claim which the United States has under this section.

"(2)(A) The Administrator, after consultation with the Comptroller General of the United States, shall prescribe regulations for the purpose of determining the reasonable cost of care or services under subsection (a)(1) of this section. Any determination of such cost shall be made in accordance with such regulations.

"(B) Such regulations shall provide that in no event may the reasonable cost of care or services sought to be recovered or collected from a third-party liable under a health-plan contract exceed an amount equal to the prevailing rate that such third party can demonstrate to the satisfaction of the Administrator it would pay for the care or services under comparable health-care contracts with facilities (other than facilities of departments or agencies of the United States) in the same geographic area.

"(C) Not later than 45 days after the date on which the Administrator prescribes such regulations or any amendment to such regulations, the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the Comptroller General's comments on and recommendations regarding such regulations or amendment.

"(d) Any contract or agreement into which the Administrator enters with a person under section 3718 of title 31 for collection services to recover indebtedness owed the United States under this section shall provide, with respect to such services, that such person is subject to sections 3301 and 4132 of this title.

"(e) A veteran eligible for care or services under this chapter (1) may not be denied such care or services by reason of this section, and (2) shall not be required by reason of this section to make any copayment or deductible payments in order to receive such care.

"(f) No law of any State or of any political subdivision of a State, and no provision of any contract or other agreement, shall operate to prevent recovery or collection by the United States under this section or with re-

spect to care or services furnished under section 611(b) of this title.

"(g) Any moneys collected or recovered on behalf of the United States under this section shall be deposited into the Treasury as miscellaneous receipts.

"(h) Medical records of a veteran who is a beneficiary of a health-plan contract under which recovery or collection is sought under this section from the third party concerned for the cost of the care or services furnished to such veteran shall be made available, under such conditions to protect the confidentiality of such records as the Administrator shall prescribe in regulations, for inspection and review by representatives of such third party for the sole purpose of permitting the plan to verify that the care or services for which recovery or collection is sought were furnished and that the provision of such care or services meets criteria generally applicable under the contract.

"(i) For purposes of this section—

"(1) The term 'health-plan contract' means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid.

"(2) The term 'payment' includes reimbursement and indemnification.

"(3) The term 'third party' means a State or political subdivision of a State, an employer, an employer's insurance carrier, automobile accident reparations insurance carrier, or a person obligated to provide, or to pay the expenses of, health services under a health-plan contract, except that such term does not include an insurance program described in section 1811 of the Social Security Act or established by section 1831 of such Act or a State plan for medical assistance approved under title XIX of such Act.".

(b)(1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply to care and services provided on or after the date of the enactment of this Act.

(B)(i) The amendment made by subsection (a) shall not apply so as to nullify any provision of a health-plan contract (as defined in subsection (i) of section 629 of title 38, United States Code, as amended by subsection (a)) that was entered into before such date and is not modified or renewed on or after such date.

(ii) In the case of a health-plan contract (as so defined) that was entered into before such date but which is modified or renewed on or after such date, the amendment made by subsection (a) shall apply with respect to such plan as of the day after the date that it is so modified or renewed and with respect to care and services provided after such date of modification or renewal.

(2) For purposes of paragraph (1), the term "modified" includes any change in premium or coverage.

(c)(1) Not later than 6 months after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the process for and results (including costs of administration and the amount of receipts and collections) of the implementation of the amendment made by this section.

(2) Not later than February 1, 1987, and February 1 of each year thereafter, the Administrator shall submit to such Committees a report updating the information in the most recent report under this subsection and providing information on the process and results of such implementation with respect to the most recent full fiscal year preceding the date on which the report is required to be submitted under this paragraph.

PART C—LIMITATION ON INCREASE IN RATES OF VETERANS' ADMINISTRATION COMPENSATION

SEC. 1121. No legislation shall be enacted that would (1) effective in fiscal year 1986, increase one or more rates of the benefits under chapter 11 or 13 of title 38, United States Code, by a percentage greater than 3.7 percent, or (2) cause the total costs of legislation increasing such rates in fiscal year 1986 to exceed $311,000,000 in budget authority or $280,000,000 in outlays in fiscal year 1986.

TITLE XII—MISCELLANEOUS PROVISIONS

RECONCILIATION BILL PROCEDURES

SEC. 1201. When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill, and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

MINIMUM DRINKING AGE

SEC. 1202. Section 158 of title 23, United States Code, is amended—

(1) in subsection (a)(2), by striking "the fiscal year" and inserting in lieu thereof "each fiscal year"; and

(2) in subsection (b), by striking "in fiscal year if in any succeeding fiscal year" and inserting in lieu thereof "in the fiscal year beginning after September 30, 1986, or the fiscal year beginning after September 30, 1987, if before the end of the period for which such funds would be available for expenditure under section 118(b) of this title".

SENSE OF THE SENATE

SEC. 1203. Senators have an obligation to inform themselves on the issues on which they are to vote; ten hours of time for debate on S. 1730 were at an earlier date yielded back by unanimous consent; all time for debate has expired, although numerous amendments remain to be voted upon; and it is the sense of the Senate that at least ten minutes on each side be allotted for purposes of debate with regard to the remaining amendments pending to the bill, S. 1730.

Amend the title so as to read: "An Act to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1986 (S. Con. Res. 32, Ninety-ninth Congress).".

Mr. DOMENICI. Mr. President, I have an amendment at the desk that changes the title. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Amend the title so as to read:

"An act to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1986 (S. Con. Res. 32, Ninety-ninth Congress)."

Mr. DOMENICI. Mr. President, this amendment has been cleared on both sides. I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—SENATE JOINT RESOLUTION 77

Mr. McCLURE. Mr. President, I am going to propound a rather lengthy unanimous-consent agreement which I believe has been cleared on both sides. I make that preamble because I ask Members to listen closely from the beginning to the end because it is rather lengthy.

I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 257, Senate Joint Resolution 77, the Compact of Free Association, and it be considered under the following time agreement: 2 hours on the bill, to be equally divided between the chairman of the Energy Committee and the Finance Committee, and the ranking minority member, or their designees; that the following amendments be the only amendments in order and they be limited to the following time limitation, and in the first degree, unless otherwise specified:

The pending Finance Committee reported amendments; and a substitute amendment to be offered by Senator PACKWOOD to substitute the trade provisions in the Finance Committee amendment, limited to 1 hour, total;

An amendment to be offered by Senator HATCH, dealing with nuclear claims, limited to 1 hour;

An amendment to be offered by Senators JOHNSTON and McCLURE to compensate the Island countries on the loss of the tax provisions, limited to 30 minutes;

An amendment to be offered by Senators JOHNSTON and McCLURE to include Palau in the compact, limited to 15 minutes;

An amendment to be offered by Senator HART, dealing with oil import fees, limited to 1 hour;

An amendment to be offered by Senator WILSON on imputed interest rules, limited to 30 minutes;

That no motions to recommit with instructions be in order; 20 minutes on any debatable motions, appeals, or

points of order, if so submitted to the Senate; and that the agreement be in the usual form.

Finally, in this portion of the agreement, I ask unanimous consent that, in the event the Hart amendment is not tabled, the bill be open to unlimited debate and amendments.

S. 655

I further ask unanimous consent that at 1 p.m. on Monday, December 2, the Senate temporarily lay aside the pending business and turn to Calendar Order No. 300, S. 655, the low-level radioactive waste compact.

I further ask unanimous consent that, once the clerk has reported the bill, Senator BOREN be recognized to offer his PAC amendment and there be no amendments in order to the Boren amendment and there be 2 hours of debate, equally divided.

I further ask unanimous consent that, at 10 a.m. on Tuesday, December 3, the Senate resume the Boren amendment to S. 655, and there be 2 hours of debate, to be equally divided, and no amendments to the Boren amendment be in order.

I ask unanimous consent that, following the conclusion or yielding back of time on the Boren amendment, the Senate proceed to vote in relation to the Boren amendment, either on a motion to table or up or down on the Boren amendment, without intervening action, and that no call for the regular order prior to the vote in relation to the Boren amendment serve to displace S. 655.

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. In the second paragraph, which makes reference to the ranking minority member, are we talking about the ranking minority member on the Energy Committee or on the Finance Committee?

Mr. McCLURE. It would be both.

Mr. BYRD. The ranking minority members.

Mr. McCLURE. Of each of those two committees.

Mr. BYRD. I have no objection.

Mr. PACKWOOD. Mr. President, I have no objection, but a clarification. As the unanimous-consent agreement was read, it referred to an amendment to be offered on behalf of the Finance Committee relating to trade. There is only one amendment, but there are trade provisions and tax provisions in that. I would not want those to be precluded by this.

Mr. McCLURE. I understand that to be the case.

The PRESIDING OFFICER. Are there any objections to the proposed unanimous-consent agreement? Hearing none, it is so ordered.

COMPACT OF FREE ASSOCIATION

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 77) to approve the "Compact of Free Association", and for other purposes.

The Senate resumed consideration of the joint resolution.

[Note.—Earlier proceedings in connection with Senate Joint Resolution 77, including printing of the committee amendments, are printed in the RECORD of October 2, 1985, beginning at page S 12419.]

AMENDMENT NO. 1051

(Purpose: To modify the trade and tax provisions)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon (Mr. PACKWOOD) proposes an amendment numbered 1051.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning with page 92, line 1, strike out all through page 96, line 7, and insert in lieu thereof the following:

SEC. 7. (a) Sections 242 and 243 of the Compact shall be construed and applied as if they read as follows:

"Section 242

"The President shall proclaim the following tariff treatment for articles imported from the Federated States of Micronesia or the Marshall Islands which shall apply during the period of effectiveness of this title:

"(1) Unless otherwise excluded, articles imported from the Federated States of Micronesia or the Marshall Islands, subject to the limitations imposed under sections 503(b) and 504(c) of title V of the Trade Act of 1974 (19 U.S.C. 2463(b), 2464(c)), shall be exempt from duty.

"(2) The duty-free treatment provided under paragraph (1) shall not apply to—

"(A) watches, clocks, and timing apparatus provided for in subpart E of part 2 of schedule 7 of the Tariff Schedules of the United States;

"(B) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

"(C) textile and apparel articles which are subject to textile agreements; and

"(D) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of chapter V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) on April 1, 1984.

"(3) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of the Federated States of Micronesia or the Marshall Islands, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

"Section 243

"Articles imported from the Federated States of Micronesia or the Marshall Islands which are not exempt from duty under paragraphs (1), (2), and (3) of section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the United States imported into the Federated States of Micronesia or the Marshall Islands shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.".

(b)(1) Subsection (a) of section 253 of the Compact shall not apply.

(2) Subsection (b) of section 253 of the Compact shall apply only to individuals who are nonresidents and not citizens of the United States.

(c) The relief from liability referred to in the second sentence of section 254(a) of the Compact means only—

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and

(2) relief in the form of the exclusion under section 911 of the Internal Revenue Code of 1954.

(d) Section 255 of the Compact shall be construed and applied as if it read as follows:

"Section 255

"(a) EXTENSION OF SECTION 936 TO THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA.—For purposes of section 936 of the Internal Revenue Code of 1954, the Marshall Islands and the Federated States of Micronesia shall be treated as if they were possessions of the United States.

"(b) EXCHANGE OF INFORMATION.—Subsection (a) shall not apply to the Marshall Islands and the Federated States of Micronesia (as the case may be) for any period after December 31, 1986, during which there is not in effect between the appropriate government and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C) (other than clause (ii) thereof) of the Internal Revenue Code of 1954.

"(C) PROCEDURE IF SECTION 936 INCENTIVES REDUCED.—If the tax incentives extended to the Marshall Islands and the Federated States of Micronesia under subsection (a) are, at any time during which the Compact is in effect, reduced, the Secretary of the Treasury shall negotiate an agreement with the Marshall Islands and the Federated States of Micronesia under which, when such agreement is approved by law, they will be provided with benefits substantially equivalent to such reduction in benefits. If, within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to section 424 of the Compact. For purposes of article V of title two of the Compact, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

"(d) THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA TREATED AS